

UNITED STATES OF AMERICA  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

— — —

IN RE: AUTOMOTIVE PARTS  
ANTITRUST LITIGATION

Master File No. 12-md-02311  
Hon. Marianne O. Battani

STATUS CONFERENCE / MOTION HEARINGS

BEFORE THE HONORABLE MARIANNE O. BATTANI  
United States District Judge  
Theodore Levin United States Courthouse  
231 West Lafayette Boulevard  
Detroit, Michigan  
Wednesday, June 4, 2014

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1 Detroit, Michigan

2 Wednesday, June 4, 2014

3 at about 10:01 a.m.

4

5 THE CASE MANAGER: All rise. Hear ye, hear ye,  
6 hear ye.

7 The United States District Court for the Eastern  
8 District of Michigan is now in session, the Honorable  
9 Marianne O. Battani presiding. All those having business,  
10 please draw near and you shall be heard. God bless these  
11 United States and this Honorable Court.

12 Please be seated.

13 The Court calls Case No. Master File 12-MD-02311,  
14 In Re: Automotive Parts Antitrust Litigation.

15 THE COURT: Good morning, everybody.

16 ATTORNEYS: (Collectively) Good morning.

17 THE COURT: It looks like you are all back today.  
18 Okay. Let me begin by introducing to you my new clerk. Some  
19 of you may not know that Bernadette Thebolt retired after  
20 40 years with the court so she is no longer with me, but my  
21 new courtroom clerk is Ms. KaMyra Doaks, and Kay is welcome.  
22 This is her first week. I'm going to excuse her after this  
23 because I don't want her to quit before she knows about us.

24 Kay is also covering -- she is with Judge  
25 Julian Cook, if any of you know Judge Cook, and he's leaving

1 this summer some time, right?

2 THE CASE MANAGER: September.

3 THE COURT: September. So she is going to be doing  
4 double duty for a while, but I hope those of you who contact  
5 the Court and deal with us more directly will get to know  
6 Kay, and I hope she will get to know and love this MDL case.  
7 Okay. Thank you, Kay.

8 All right. Let's start with the item on the  
9 agenda, the status of the temporary stay.

10 We will follow the same procedure, if you would  
11 give your name before you speak, that's true of everybody.

12 MR. WILLIAMS: Yes. Thank you, Your Honor. My  
13 name is Steve Williams. I represent the end-payor class.

14 On this stay the DOJ's report to the Court is due  
15 on June 23rd. I don't want to speak for them, but what I did  
16 want to tell the Court is the perspective of our group and I  
17 think the other plaintiffs' groups share this, is that this  
18 stay affects a very profound and severe limitation on our  
19 ability to do any real meaningful discovery at this point.

20 We have the ability to take depositions but we  
21 can't ask anything about substance, so therefore there is  
22 really no reason for us to do it particularly given we will  
23 have limits on how many we can take and we are not going to  
24 use our depositions now when we can't ask meaningful  
25 questions.

1           Given what we know from DOJ's statements and guilty  
2     pleas that secretive conduct was engaged in, code words were  
3     used, documents were destroyed, that limitation really bars  
4     us on the plaintiffs' side from doing anything meaningful  
5     other than --

6           THE COURT: Wait a minute. You are representing  
7     the end payors?

8           MR. WILLIAMS: I represent the end payors, but I  
9     think what I say is equally applicable to all the plaintiff  
10    groups.

11           So the point of this is just to let the Court know  
12    from our perspective until such time as the stay is lifted,  
13    other than the limited amount we've gotten from DOJ  
14    productions, there is not much we can do meaningfully to  
15    progress on our side to learn the facts of the case.

16           THE COURT: Is there anybody here from the DOJ?

17           (No response.)

18           THE COURT: We tried calling them hoping to get a  
19    little -- I guess they decided not to appear. Okay. We will  
20    have to wait then until we get that report on the 23rd, which  
21    I don't know what format it will be in but I certainly would  
22    intend on notifying all of you or dispersing it in some  
23    fashion so that you will know -- or you may know before I  
24    know, I don't, however these things work.

25           It was entered in December, right? That was the

1 first part of the stay was December, so this is six months  
2 now. Okay. And I could appreciate, Mr. Williams, what you  
3 said. All right.

4 Counsel?

5 MS. SULLIVAN: Your Honor, if I may respond just  
6 briefly? My name is Marguerite Sullivan and I represent  
7 Sumitomo defendants in the wire harness case.

8 The defendants in the wire harness case disagrees  
9 completely with what Mr. Williams stated about the limits on  
10 discovery that the stay has imposed. In this case in  
11 particular the stay only bars merits depositions, that's it.  
12 So there is no limit to deposition discovery -- I'm sorry, to  
13 document discovery, there is no limit to interrogatories,  
14 there are no limits to the plaintiffs' depositions, to  
15 third-party discovery, to 30(b)(6) depositions of the  
16 defendants, and there are a lot of issues that we can get  
17 through -- a lot of discovery issues that need to be dealt  
18 with during this period while the stay is in place  
19 particularly class-certification-related issues which are  
20 critical to this case.

21 THE COURT: Mr. Williams?

22 MR. WILLIAMS: Your Honor, Steve Williams again for  
23 the end payors. I have to respond to what was just said.

24 To say that there is no limit other than merits  
25 kind of swallows the exception. If we can't talk about

1 merits what 30(b)(6) depositions of the defendants would we  
2 have any interest in taking? We don't. The defendants  
3 perpetrated the wrongful conduct. The defendants pled  
4 guilty. Some of the defendants have already admitted to  
5 destroying evidence. So to suggest we're in an ability to do  
6 anything meaningful when we can't ask a merits question at a  
7 deposition is not correct. To suggest that we can --

8 THE COURT: You need your merits depositions before  
9 you do your class certification, is this your argument?

10 MR. WILLIAMS: Of course, yeah, there is no doubt.

11 THE COURT: Sure. Okay.

12 MR. WILLIAMS: And the state of the law is to the  
13 extent that those issues relate to the 23 questions -- the  
14 Rule 23 questions we have to address them, and there is no  
15 doubt in my mind at least that the defendants, when they  
16 respond to our motion, will be raising merits questions. So,  
17 of course, we need merits discovery. So it is not free and  
18 full and fair and open at this point. Our hands are tied.

19 THE COURT: Okay. Your hands are tied but you have  
20 enough to do.

21 MR. WILLIAMS: We have --

22 THE COURT: You have plenty to do.

23 MR. WILLIAMS: We have things to do but what we  
24 can't get to is the facts of the misconduct, we are barred  
25 from that, and that's what this case is about. So if we

1 can't do that then the work we can do, and hopefully later  
2 when we talk about coordination the Department of Justice has  
3 agreed that there is some information they would not object  
4 to the defendants providing us, that would be meaningful,  
5 transactional information would be meaningful, information  
6 about what makes and models of cars they pled guilty to  
7 conspiring about would be meaningful, but until we can put  
8 witnesses under oath and ask them questions about what they  
9 did our hands really are tied because what we are limited is  
10 looking at coded documents, wondering what's missing because  
11 documents were destroyed, hidden or concealed. So we need to  
12 get to the point where the stay is lifted to meaningfully  
13 progress in terms of discovery.

14 THE COURT: Okay.

15 MR. WILLIAMS: Thank you.

16 THE COURT: At this point there is nothing we can  
17 do about it. The DOJ will let us know when they let us know.  
18 I mean, I wish I would have known he wasn't voluntarily  
19 appearing, I would have subpoenaed him to appear or  
20 something, but we will get to it June 23rd.

21 Okay. Anybody else have any comment on that?

22 (No response.)

23 THE COURT: Okay. I take it both sides join in  
24 with what was said.

25 All right. Let's go to the next item then, and

1 this is the discussion in scheduling of the end-payor  
2 plaintiffs, auto dealer plaintiffs, State of Florida and City  
3 of Richmond's motion to consolidate or coordinate all actions  
4 in the MDL.

5 MR. DAMRELL: Your Honor, good morning. My name is  
6 Frank Damrell on behalf of the moving plaintiffs.

7 The genesis of this motion really is the colloquy  
8 that you and I had at the last hearing, Your Honor, in which  
9 you instructed me to see if we could work out some type of a  
10 way to streamline the motion practice in this case with  
11 respect to the motions to dismiss, in particular regarding  
12 issues that have been resolved by the Court, and the need to  
13 continue to file briefing -- extensive briefs on those issues  
14 that you've already decided.

15 As a result of that colloquy, the moving plaintiffs  
16 felt that there was really more to this issue than simply the  
17 motion practice; that there was a point that we had reached  
18 in this case that we needed true coordination. That is  
19 typical of most MDLs of this complexity and size.

20 Your Honor, this -- the responses to this motion  
21 raise the issue of whether or not we really have an MDL in  
22 many ways because the defendants in this case would prefer to  
23 proceed with each case seriatim as if these were -- this case  
24 is lumped together. Now, I will acknowledge that I think  
25 there is some agreement here generally that would be best to

1 coordinate the motion practice and in dealing particularly  
2 with the motions to dismiss. I think there is an opportunity  
3 there for further agreement on that, but at present there is  
4 no such agreement and we believe that under the circumstances  
5 presently we should attempt in every way to help the Court  
6 coordinate this case among the various defendants.

7           The -- it could be argued I think and persuasively  
8 that this is a classic MDL. This is not a case where you  
9 have strands here and there, this is a case of components, of  
10 car-part components. And if you look at this case in terms  
11 of an assembly line, these components would be put into this  
12 car and ultimately the end payors or the dealers, they buy  
13 the car, they sell the car, it is the car we are talking  
14 about, and these are all components of the car.

15           Now, some defendants argue that well, this is -- in  
16 fact, we should not even consider this an MDL, that this  
17 should be somehow -- this case should be parsed among other  
18 judges or assigned to other judges, and --

19           THE COURT: You don't need to go there. I'm not --

20           MR. DAMRELL: You're not persuaded by that  
21 argument?

22           THE COURT: No, and I have read it and I really  
23 don't want to hear a lot of argument because I have another  
24 idea I am going to get to, I'm just going to let you argue  
25 for a couple minutes, but I am not getting rid of -- I'm not

1 removing parts of this case, I could remove the whole case,  
2 that wouldn't bother me, but I am not removing parts.

3 MR. DAMRELL: That's understandable. I will not  
4 spend any time on that but I do think, Your Honor, it is  
5 important with respect to this case that we coordinate the  
6 motion practice. And I think the notion of tranches or  
7 grouping this is classic. We started with tracks and we  
8 started with templates, and we passed that point. We are at  
9 a point now where we need to coordinate and group the  
10 defendants in a logical fashion. And by no means am I  
11 suggesting that we have an answer to that, perhaps there is a  
12 better way to group these defendants, but in dealing with  
13 motions it seems to me that we can move this along in a way  
14 that would give the defendants their prerogatives and rights  
15 with respect to appeal and narrow the issues for the Court so  
16 that we could promptly move beyond the pleading stage and  
17 into discovery, particularly after the stay is lifted.

18 Your Honor, in that regard, I am -- this is a case  
19 I have never really encountered when you have the victims,  
20 the plaintiffs in this case, and you have those that pled  
21 guilty, that destroyed evidence, seem to feel that there is  
22 a -- that we are on the same -- there is a certain equanimity  
23 here between the two parties, and there really isn't. And  
24 the point that we would want to make is that the plaintiffs  
25 should be allowed, and obviously hopefully with some

1 cooperation from the defendants, to group these defendants in  
2 such a fashion that we can deal with issues not just with  
3 respect to the motion practice but with discovery as well.

4 And in a case such as this, you know, they say this  
5 is a very unusual case. Well, it is an unusual case. It is  
6 unusual because there are so many defendants. It is unusual  
7 because all the defendants pled guilty. But let's think  
8 about that because by pleading guilty there was no hearing,  
9 there was no trial, there was no -- we --

10 THE COURT: We don't want to stay all of the  
11 defendants.

12 MR. DAMRELL: Virtually all.

13 THE COURT: That's not as I read the briefs.

14 DEFENSE ATTORNEYS: (Collectively) No.

15 THE COURT: Okay.

16 MR. DAMRELL: Virtually all?

17 DEFENSE ATTORNEYS: (Collectively) No.

18 THE COURT: No.

19 MR. DAMRELL: How about 29, 29?

20 MR. TUBACH: We are ready to render a verdict, Your  
21 Honor.

22 MR. DAMRELL: These are all the good guys, Your  
23 Honor. Look at the point being there were multiple --

24 THE COURT: Of 90-some defendants we could say a  
25 few or some.

1 MR. DAMRELL: Well, it was my understanding that  
2 there were 29 defendants I believe that entered pleas of  
3 guilty. Fair enough. That's a lot of defendants.

4 Nevertheless, in terms of what they know is  
5 something that we have no idea of in terms of the plaintiffs.  
6 We don't know what they know. We don't have any idea what  
7 this conspiracy consisted of.

8 And in terms of the destruction of evidence that is  
9 also a grave concern and Mr. Williams has already commented  
10 on that. The point I'm trying to make here --

11 THE COURT: Basically -- Mr. Damrell, excuse me for  
12 interrupting but we need to move this along. We are really  
13 looking for a procedure to better coordinate what is going on  
14 here and to move the case as efficiently as we can. Is  
15 that -- that's basically what you are --

16 MR. DAMRELL: And we have submitted such a  
17 procedure, Your Honor.

18 THE COURT: I understand that. Okay. I have read  
19 it, and I think that's enough argument for right now because  
20 I'm going to discuss something in just a minute. Let me hear  
21 the defense argument.

22 MR. DAMRELL: Could I ask, Mr. Williams, he was  
23 going to take part of my time so if he could do that now that  
24 may be helpful?

25 THE COURT: It doesn't look like it is

1 Mr. Williams.

2 MR. WILLIAMS: Mr. Barrett.

3 MR. BARRETT: Just briefly, Your Honor?

4 THE COURT: Okay.

5 MR. BARRETT: Your Honor, I'm Don Barrett, one of  
6 the co-leads for the auto dealers.

7 There is another facet to this motion to  
8 coordinate, and that's the discovery coordination. It would  
9 be terribly inappropriate to depose the class representatives  
10 now as some of the defendants are insisting. Our clients  
11 would be blindsided if they are forced to give depositions  
12 before they know the facts of the conspiracy, and we, that is  
13 their lawyers, can adequately advise them. We are stayed  
14 as --

15 THE COURT: How would they be blindsided?

16 MR. BARRETT: Well, we don't know much about the  
17 conspiracy except what we read in the paper. We don't know  
18 what the parts are involved. We don't know what the -- we  
19 don't even know all of the car models or even all of the  
20 makes that are involved.

21 We are stayed, as Mr. Williams said, from effective  
22 discovery but they are not. They know what they did, and  
23 they have -- they would have an enormous advantage over us if  
24 they were able to take advantage of the -- of their knowledge  
25 of the criminal acts that they have committed. We don't know

1     what prices were fixed on all models, we don't know by how  
2     much as yet, so it would be grossly prejudicial to our  
3     clients who really are honest businessmen and consumers to be  
4     prematurely forced into depositions.

5             Your Honor, there is another thing. There is  
6     nothing that these plaintiffs right now could really add.  
7     There is no reason to take their depositions. All they need  
8     from the auto dealers are their acquisition data. We have  
9     been giving them -- we've given them hundreds of thousands of  
10    pages and we are continuing to do that.

11            And they don't want to take one deposition, they  
12    are insisting on taking 20 or 30 depositions of each car  
13    dealer, for example, and, Your Honor, that's a -- it is an  
14    abusive idea that they have. The whole point of it is to  
15    take a useless, repetitive, abusive and premature set of  
16    depositions hoping to harass these businessmen out of this  
17    litigation. It is the world turned upside down, Your Honor.

18            These defendant corporations, if they were  
19    flesh-and-blood people and standing before you today they  
20    would have on orange jumpsuits and leg shackles. They are  
21    entitled to a fair procedure and they are entitled to a fair  
22    trial, but they are not entitled to have priority over their  
23    victims in discovery.

24            THE COURT: Do you have motions now to take the  
25    depositions of 20 some people in your dealerships? Are those

1 filed?

2 MR. BARRETT: No, but that has been discussed, that  
3 is what they are insisting on in their -- in their motion  
4 concerning the wire harness, the protocol.

5 THE COURT: Okay. Defendants?

6 MS. SULLIVAN: Marguerite Sullivan on behalf of the  
7 Sumitomo defendants. I will be speaking on behalf of the  
8 wire harness defendants only. I understand that there are  
9 some other lawyers in the room that would like to speak on  
10 behalf of other defendants in the larger MDL.

11 Just to set the stage here, this is not a classic  
12 MDL. A classic MDL is the wire harness MDL where there were  
13 17 cases filed by multiple different classes all over the  
14 country. Those cases went before the judicial panel on  
15 multidistrict litigation and the JPML transferred them all to  
16 Your Honor and formed an MDL called the wire harness MDL  
17 originally. That is a classic MDL.

18 This is a completely different animal because what  
19 happened here was that you had the wire harness MDL  
20 transferred to Your Honor, and then the JPML considered the  
21 HCP case, the fuel sender case and the instrument panel  
22 cluster case to be sufficiently related such that they should  
23 also get transferred to Your Honor.

24 And then the plaintiffs filed 25 other cases in  
25 this court and those were joined with this case, but those 25

1 other cases are completely different cases. There are 36  
2 defendant families, and I know the number is much higher when  
3 you look at individual defendants, and 26 of those defendant  
4 families are only in one product category case, they are not  
5 across the board in all of these cases. So that's an  
6 important thing to understand. This is not a classic MDL.

7 Second, we hear a lot both in the briefing and in  
8 the argument that we just heard about the victims, the  
9 indirect purchasers are who are calling themselves victims,  
10 and they claim that their rights trump the defendants'  
11 rights, but they are assuming that they have proved their  
12 case already, Your Honor, and they haven't done that. They  
13 have a long way to go before they do that.

14 As you know, they have pled in their complaints  
15 that there were conspiracies -- I'm going to talk  
16 specifically about the wire harness complaints, but they  
17 claim that there was a conspiracy that related to RFQs issued  
18 by OEMs, auto manufacturers. These indirect purchasers are  
19 not auto manufacturers admittedly. So what they have to  
20 prove to establish their claims, to establish that they were  
21 victims, is that they paid more for the cars that they  
22 purchased because of an overcharge that was charged to the  
23 OEMs.

24 Your Honor noted in the -- in your ruling on the  
25 defendants' motion to dismiss that that might be difficult

1 for them to do, and we agree, we don't think they are going  
2 to be able to do it, but that's not really the focus of  
3 today's discussion. My point is just that plaintiffs'  
4 counsels' outrage at the fact that the defendants in this  
5 case would actually want to defend ourself are totally  
6 unwarranted because they haven't yet proven their case, and  
7 that's what brings me to the crux of the defendants'  
8 opposition to their motion to coordinate.

9 We want to continue to move this case forward so  
10 that we can prove to Your Honor that the conspiracy in the  
11 wire harness industry was not nearly as broad as plaintiffs  
12 claim that it is. We want to prove to Your Honor that they  
13 were not victims and that they were not impacted by the  
14 defendants' conduct, but they want to push everything off.  
15 They don't want us to get there. They want to push off the  
16 plaintiffs' depositions indefinitely so we can't even figure  
17 out exactly what the plaintiffs' purchased or from whom or  
18 how they set the price of the cars that they purchased,  
19 whether they negotiated them. We don't get to ask any of  
20 those questions until some other point in time until after  
21 the plaintiffs have progressed in these other 28 product  
22 cases that are completely unrelated to our case.

23 They want to push off some of the defendants'  
24 depositions indefinitely, again, while they learn about  
25 unrelated conduct with respect to unrelated products. And

1 they want to delay a determination on --

2 THE COURT: What about the merits deposition in the  
3 wire harness case?

4 MS. SULLIVAN: The merits depositions are stayed  
5 for the moment, that's true. As I indicated earlier, there  
6 is a lot of discovery related to class certification, which  
7 is a huge issue for the plaintiffs in this case, which, of  
8 course, they want to push off until some later date again  
9 undetermined.

10 But merits depositions will occur as soon as the  
11 DOJ stay lifts. I don't know for sure but I would expect  
12 that the DOJ's stay related to wire harness would lift before  
13 some of the other products. The stay currently is different  
14 for the products. The first four cases only have a stay in  
15 place related to merits depositions, but all other discovery  
16 can proceed. The other 25 cases behind the first four have a  
17 more broad stay. So the DOJ is not treating these product  
18 cases similarly even with respect to the stay.

19 THE COURT: But you agree they need the merits  
20 deposition -- excuse me, they need to be able to get to the  
21 merits before we can really get into the class certification?

22 MS. SULLIVAN: They do, they do. And as we  
23 discussed the last time that we debated the schedule for  
24 class certification, the defendants proposed that we schedule  
25 class certification briefing originally for 180 days after

1 the DOJ stay lifted in the wire harness case for that precise  
2 reason. But it is not true that they can't proceed with  
3 their case or that they can't develop their class  
4 certification theories. I mean, they need to know, for  
5 example, the procurement practices of the OEMs and the  
6 process that each defendant went through when it responded to  
7 an RFQ. How do we set the prices for the wire harness  
8 generally? That has nothing to do with conspiratorial  
9 conduct. It is 30(b)(6) testimony that they can obtain now.  
10 And, you know, the representation that they can't proceed  
11 with their case, they can't develop their case, is just not  
12 true.

13 This happens all the time, by the way. There are  
14 other examples of cases where there has been a DOJ stay on  
15 merits discovery and tons of discovery has occurred during  
16 that stay while the stay is in place.

17 I will address specifically the plaintiffs'  
18 depositions because it's -- we are willing -- the defendants  
19 are willing to use our best efforts to try to avoid  
20 duplication. It is not true that we are insisting on 20 some  
21 odd depositions of each of these individual plaintiffs. We  
22 have not made that statement. In fact, we said the opposite,  
23 we said that we will work with the plaintiffs to try to avoid  
24 duplication and that we may be able to accomplish it to some  
25 extent. For example, the wire harness defendants I imagine

1 could probably cover together with the HCP defendants, the  
2 fuel sender defendants, the instrument panel cluster  
3 defendants, they could probably cover all of those products  
4 when they are asking questions at the plaintiffs'  
5 depositions.

6 And to the extent that there are other defendants  
7 that are in a position to examine plaintiffs now, there is no  
8 reason why that couldn't happen, but to mandate that there  
9 can only be one deposition of each of these plaintiffs across  
10 all 29 product cases would be, A, logistically impossible I  
11 think because you've got defendants in some of the later  
12 cases that, A, have not even been served, and then, B, even  
13 when they have been served the logistics of organizing and  
14 coordinating these depositions would be extremely difficult,  
15 but putting that aside the more important point is that it  
16 would delay the wire harness case significantly.

17 We expect that the depositions of the plaintiffs  
18 will enable us to prove that some plaintiffs did not purchase  
19 price-fixed wire harnesses at all or cars containing  
20 price-fixed wire harnesses, and we expect that we'll be able  
21 to eliminate plaintiffs' claims on other grounds as well  
22 without getting into the weeds of all of that now, but they  
23 are suggesting that we wait for years before we can depose  
24 these people.

25 THE COURT: All right. Thank you.

1 MS. SULLIVAN: Your Honor, I will add just before I  
2 sit down, there are other ways where we think we can avoid  
3 duplication and streamline discovery, third-party discovery  
4 is one way. We are using our best efforts to avoid  
5 duplicative discovery of -- or depositions of defendants is  
6 another way. So there are many ways we can do this, they  
7 just didn't give us an opportunity to work it out with them.

8 THE COURT: I am a little bit curious as to your  
9 recommendation, of course, you're only wire harness so I  
10 don't know, but your recommendation that other parts go to  
11 other judges.

12 MS. SULLIVAN: Oh, that's not my motion.

13 MR. KESSLER: Your Honor, good morning. I'm  
14 Jeffery Kessler from Winston & Strawn. I'm here speaking on  
15 behalf of the 18 defendants who have filed what we have  
16 called the deferred defendants' brief.

17 THE COURT: I like that name, deferred defendants.

18 MR. KESSLER: We consist of 12 corporate families  
19 involving 13 different product categories. My individual  
20 clients in that group are Panasonic Corporation and Panasonic  
21 North America.

22 Your Honor, I heard you loud and clear about your  
23 reaction to our request for relief, so what I would like to  
24 do is spend a little time explaining the problem we see and  
25 then maybe the Court has ideas on a solution if you don't

1 like the solution we propose, but the problem is overwhelming  
2 and severe.

3 We all agree --

4 THE COURT: So how many judges were you thinking  
5 this should be sent out to?

6 MR. KESSLER: Your Honor, we were going to leave it  
7 to the fair decision making of this courthouse perhaps in  
8 consultation with the chief judge here.

9 Let me explain how this has been done when this has  
10 come up before and the problem, if I may. I think the  
11 plaintiffs, the defendants, the Court, everyone agrees the  
12 purpose of this proceeding under the federal rules and the  
13 MDL rules is to have a fair and efficient proceeding. No one  
14 could dispute that.

15 The problem we have, and it is nobody's fault, it's  
16 least of all the Court's fault, it is nobody's fault that the  
17 proceedings at the moment are neither fair nor efficient for  
18 most of the defendants in this case, and the reason --

19 THE COURT: What do you mean, they are not fair?

20 MR. KESSLER: I will explain that, Your Honor.

21 The reason for that is because when the MDL panel  
22 originally ruled there were four product categories that it  
23 considered. There are now 29 product categories. There was  
24 about six or seven cases at that time. There are now almost  
25 100 cases -- I just counted and I believe it is 98, Your

1 Honor, we are about to get to 100. And very, very  
2 importantly, Your Honor, there is no end in sight. The  
3 Department of Justice has made it --

4 THE COURT: I wish you wouldn't say it like that.

5 MR. KESSLER: But, Your Honor, that's the reality  
6 we have to face. The DOJ has made it clear that there are  
7 many investigations continuing. We have to expect, and I'm  
8 not exaggerating, there are going to be dozens more cases  
9 filed over the next year or two involving numerous new  
10 product categories, involving defendants who are currently  
11 not in the MDL. The fire marshal is going to eventually have  
12 to put a restriction on the number of lawyers who can come  
13 into this courtroom, so this is unprecedented.

14 And in that regard, there has -- what has happened,  
15 why do we call ourselves the deferred defendants? Because  
16 the deferred defendants have not yet even had an amended  
17 complaint because I don't know what the charges are against  
18 them. They are under a permanent cloud, that indefinite  
19 cloud of litigation.

20 By the way, most of the deferred defendants have  
21 not pled guilty, which is why you heard the uproar about  
22 this. Okay. The majority of the defendants in this MDL have  
23 not pled guilty, nor have they been charged by the Department  
24 of Justice, nor is there any indication they will be charged  
25 by the Department of Justice.

1           So the unfairness is while the federal rules say  
2   you get an efficient, fair proceeding, they are in limbo not  
3   knowing the charges against them in this litigation, watching  
4   other cases go by that have no connection to them. And this  
5   is what I will call the myths that plaintiffs have  
6   perpetuated in the MDL.

7           Myth number one is these cases are related because  
8   they are auto parts. In point of fact, many of these  
9   defendants are in one product, don't know these other  
10   companies, are not alleged ever to have met and spoken to  
11   them let alone be in any common set of facts with them,  
12   completely unrelated claims of conspiracy, unrelated  
13   defendants in most cases. The initial cases had a couple  
14   overlapping defendants, most of the cases have no overlapping  
15   defendants. It is interesting in the case that I have for  
16   Panasonic Corporation we are the only defendant so far, no  
17   one else has even been joined; presumably when they amend the  
18   complaint some day we will know who they claim we conspired  
19   with. So they are not related.

20           Second is the MDL order required all of this. Your  
21   Honor, that's completely untrue. In fact, if this was an MDL  
22   proceeding for all of these cases they would have tagged --  
23   it's called tagging each of these other cases, the 80 cases  
24   that have come since the original MDL, as an MDL case, they  
25   would have gone to the proceedings where you get to object if

1 you want to to the MDL panel and say no, this doesn't belong  
2 in this MDL, and the panel decides. They avoided all of  
3 that. What they did was they filed all the other cases after  
4 the original four in this court, in the Eastern District of  
5 Michigan, and they just said oh, it is all related to the  
6 auto parts MDL, let's get here, so it has never gone through  
7 the MDL process, it is not required by the MDL rules, so  
8 that's a myth.

9           The next thing is the myth that somehow by putting  
10 us all here there is going to be a global settlement as if  
11 this was one conspiracy. Let's be very clear, no complaint  
12 alleges one conspiracy. No department plea agreement alleges  
13 one conspiracy. No foreign proceeding alleges one  
14 conspiracy. Each of the settlements that have been presented  
15 so far are not of one conspiracy, it is an individual  
16 defendant about an individual part separately, so none of the  
17 ideas that you normally have in an MDL that if you get  
18 everybody together maybe they all can settle together, it is  
19 impossible in this case, there is no prospect of it, it will  
20 never happen, and yet the cases keep coming through the door  
21 and they are going to keep coming through the door with no  
22 end in sight.

23           The next myth about this, that somehow there are  
24 many efficiencies going on here. Why are there not many  
25 efficiencies? The reason is if you are in different parts

1 the discovery is about different parts, they don't overlap.  
2 Different companies are involved. Different defendant  
3 witnesses are involved, not the same ones in most cases. If  
4 you are certifying a class, for example, at the direct level  
5 you are -- their expert will have to do a separate  
6 predominance analysis of each part separately with different  
7 regressions, with different studies. There's no overlap in  
8 the direct purchaser certification. There's going to be no  
9 efficiency there at all.

10 The only overlap, which is why they raise this  
11 issue, is that for the plaintiffs' depositions they chose to  
12 have the same class representatives in these 98 cases. Now,  
13 that wasn't our fault. The classes are big. They could have  
14 chosen different class representatives for each case, but  
15 their complaint is, well, we decide and then we hear that the  
16 poor auto dealer who chose to be a plaintiff in 30, 40  
17 different cases says I don't want to be deposed in those  
18 cases when they can't be the class representative. It is  
19 very simple. No one forces anyone to be a class  
20 representative. When you step up -- how do you know they are  
21 an adequate class representative? How do you get discovery?

22 So the efficiency issue is really all on their side  
23 because they picked the same plaintiffs. Now, we are willing  
24 to work on that, Your Honor. We are not saying that a  
25 plaintiff, even though they submitted to this, should be

1     deposed 50 times, but they also have to be deposed and it is  
2     going to be more than once because it is impossible unless  
3     you are going to say now, Your Honor, these cases are stayed,  
4     all of them until the Department of Justice is finished,  
5     which may be three, four years from now, and we see how many  
6     hundreds of cases we are up to then, and I would say, Your  
7     Honor, that would be neither efficient nor fair to anyone.  
8     Unless you are going to do that, these cases have to move  
9     forward in some way. People have a right to do that.

10           So the question becomes what is the answer? Now,  
11     we came up with one answer which Your Honor doesn't like.  
12     The answer, we said the number and diversity of these cases  
13     is so much that no one judge, the finest judge in the  
14     country, couldn't possibly have the time to give the  
15     consideration to all of these 40 different -- no, it is going  
16     to be 80 different class certification motions and growing,  
17     each one having to be separately situated, hundreds, if not  
18     thousands, of discovery disputes. It's just not feasible.

19           And the MDL rules themselves say, even if it is an  
20     MDL, right in the decisions they talk about in some cases it  
21     is appropriate to avoid -- to involve multiple judges because  
22     the workload is simply too great. Certainly this district's  
23     local rules would allow there to be coordination. We are not  
24     trying to get rid of coordination, we are quite confident  
25     that you and several colleagues could come up with a plan to

1 coordinate where was there, but our concern is -- and we are  
2 open to any other solution obviously Your Honor comes up  
3 with. Unless we get a solution we have clients sitting there  
4 saying when will this case move? When do we get to -- we  
5 didn't plead guilty, when do we get to clear our name? When  
6 do we get what Rule 23 says, which is to decide class  
7 certification as soon as practicable?

8           What the plaintiffs want to do is keep this  
9 indefinitely for very obvious reasons; they would like to  
10 frighten defendants whether they are guilty or not, whether  
11 there's merits or not, whether they are victims or not, to  
12 settle these cases, and I'm sure some companies will settle  
13 these cases but most will not, and there will never be a  
14 global settlement, and the problem is we have to find a  
15 solution, so, Your Honor, I obviously have great respect, if  
16 you don't like our idea it is there, but we need a solution  
17 for all of these deferred defendants.

18           THE COURT: At this point we know that we need to  
19 be done with the DOJ investigation or we have to do something  
20 with the DOJ to say this is the cutoff and discovery is going  
21 to be allowed.

22           MR. KESSLER: Your Honor doesn't have to grant  
23 their request for a stay, that's Your Honor's decision. At  
24 some point these cases have to move forward, but my point is  
25 even if the DOJ ended their stay today there is a problem of

1 more and more cases coming, and they are going to come. And  
2 this problem -- right now, so under the plaintiffs' proposal  
3 my defendant, Panasonic, would get an amended complaint for  
4 the first time about a year from now, and that's only if Your  
5 Honor raced like a clock and was issuing these decisions  
6 constantly ahead of us, and that's not fair to the Court,  
7 these are important issues. You know, I don't know how to  
8 get there.

9 So under their schedule, which I think no judge  
10 could follow, a year from now we first get our amended  
11 complaint and start thinking about what the charges are  
12 against us and what's there. That's not the American justice  
13 system. It is not what MDLs are designed to do.

14 So, Your Honor, I'm going to sit down unless you  
15 have questions for me but that's why with all due respect we  
16 suggested the idea that it is appropriate to sit down and  
17 find a unique way envisioned by the rules to get additional  
18 judicial resources so that all of the defendants and the  
19 plaintiffs can get their fair and efficient day in court.

20 THE COURT: All right.

21 MR. KESSLER: Thank you, Your Honor.

22 THE COURT: Thank you.

23 MR. WILLIAMS: Your Honor, I know -- I'm sorry.  
24 Steve Williams for the end payors and the moving plaintiffs.

25 I know you said that you had a thought, and I'm

1 sure we all want to hear it, but I want to respond to some of  
2 the things that were just said because I don't think they  
3 fairly or accurately describe what's going on here.

4 First, I don't know where the idea about amended  
5 complaints a year from now came from, certainly I don't think  
6 we said it, but to satisfy those defendants you will have  
7 ours next week.

8 Service. We served everyone, everyone in all of  
9 our cases except one of those defendants who pled guilty but  
10 refuses to accept service even though they could and insist  
11 we go through the Hague process.

12 The argument you chose to be a plaintiff, we didn't  
13 choose that, but you refuse to be deposed. We didn't say  
14 that. What we are saying is I bought a car and the facts  
15 about me buying a car are the same whether the attorney in  
16 the first case asks it or the attorney in the last case asks  
17 it. There's no difference. However, they did choose to  
18 conspire, that was their choice.

19 Now, there is a lot of uproar about how many  
20 defendants pled guilty but the fact is, and I don't think  
21 they are going to deny this, 36 corporate families, 27 guilty  
22 pleas. So I don't think we have to fight about that. We  
23 know that most of them did this. Those that didn't plead  
24 guilty here, most were fined by another jurisdiction, some  
25 are applicants so therefore they don't plead guilty.

1 I really think we need to get away from fighting  
2 about we don't know what they are charging us with, it is not  
3 fair to us, we have to wait. I agree with a lot of what  
4 Ms. Sullivan said. Both of us -- both sides deserve a fair  
5 opportunity, for us to try to prove our claims and for them  
6 to assert whatever defenses they have, but when you listen to  
7 the argument that says -- and there was an irony in the way  
8 it was presented because they said well, the plaintiffs  
9 assume that they were victims and that they've won. We don't  
10 assume we've won but we assume that when the Attorney General  
11 and the Assistant Deputy Attorney General running the  
12 investigation say American consumers and businesses paid more  
13 for their cars, that they know what they are talking about  
14 and that we deserve an opportunity to try to prove that, both  
15 of us fairly, not tilted one way or the other.

16 So I want to focus on a few things because they are  
17 getting lost here. Number one, it is an MDL. The common  
18 core of it, the conduct all of them are alleged to have  
19 engaged in, and that 27 of those corporate families pled  
20 guilty to, putting aside the destruction of evidence and the  
21 obstruction of justice, is fixing the prices of component  
22 parts of cars, and we allege they did it the same way. So  
23 that's the common core and that's what an MDL is about.

24 So as the Court is all too familiar, when you get  
25 the motion to dismiss in case five it says the same things

1 that the motion to dismiss in case one said, and that's why  
2 you have an MDL, so you can have common rulings on those  
3 issues that don't deviate. That's why we are here.

4 And there are a few key things. We talked about  
5 third parties. For the indirect purchasers in particular we  
6 need third-party discovery in order to certify our classes.

7 THE COURT: We are not there yet.

8 MR. WILLIAMS: I understand, but there is a  
9 critical point here because what you heard the wire harness  
10 defendants say, we can do that, we've got to go get this  
11 third-party discovery. We can't go to them 29 times. We,  
12 indirect purchasers, we can only go to them once because,  
13 Your Honor, if Toyota came before you and said this is my  
14 fifth subpoena now, this is unfair, I'm a third party, you  
15 can't keep subjecting me to this, they would have a pretty  
16 good argument. We are entitled to have this on the table so  
17 we can go to them once, jointly if we have to with  
18 defendants, and we will try to work with them because we want  
19 the information, they want the information, but we can't go  
20 to them 29 times.

21 THE COURT: Okay.

22 MR. WILLIAMS: Thank you.

23 THE COURT: That's kind of what I want to talk  
24 about here because as I read the motion I realize that before  
25 this case does get out of hand, and it's not there yet but if

1 the DOJ drops ten more parts tomorrow and we have more cases,  
2 I mean, it could be -- it could be quite the challenge. I  
3 think what we need, and I have hesitated to do this in the  
4 past and you know that, but I do think now we need -- I'm  
5 calling it a facilitator. We need some person who is going  
6 to be a discovery-scheduling facilitator, administrator, who  
7 needs to be a neutral person who can go to both sides, see  
8 all of these issues that you are talking about with the  
9 discovery and who are the main third parties, for instance,  
10 that are going to be deposed and arrange some kind of  
11 coordination. I can't do that for you, and I think that  
12 somebody needs to do that.

13 I don't know who that person will be. It needs to  
14 be an outside person, not somebody within our court, because  
15 I have nobody here, a magistrate judge, anybody else, who can  
16 devote full time, and I see this as a very major job for a  
17 period of time.

18 What I would like, I want to hear -- I want to hear  
19 your comments about this, and it's really not open for yes or  
20 no, I want to hear what you feel this person could best do,  
21 and I want you to be in a position to submit names to me. I  
22 want somebody you are all satisfied with, and maybe you could  
23 prescribe a process with this selection. I plan based on  
24 written submissions to make the selection in the end myself  
25 from these people.

1                   Comments?

2                   (No response.)

3                   THE COURT: No comments. Okay.

4                   MR. KESSLER: I have a question, Your Honor?

5                   THE COURT: Yes.

6                   MR. KESSLER: Would this person in effect be  
7 appointed a special master by the Court in effect under  
8 Rule 53, is that the Court's idea?

9                   THE COURT: I think it would have to be under  
10 Rule 53. I don't know how --

11                  MR. KESSLER: I think where this has been used in  
12 other MDLs I think that's the procedure that has been  
13 followed, and then it becomes a designation under Rule 53 as  
14 to what you are delegating and it can be appealed up, Your  
15 Honor. I'm just asking if that's the procedure the Court is  
16 envisioning?

17                  THE COURT: Yes, I guess is the answer to that  
18 question.

19                  MR. WILLIAMS: Your Honor, Steve Williams for the  
20 end payors.

21                  This is something we have all discussed on our  
22 side, and in a number of the electronic cases that the  
23 defendants frequently refer to in the northern district we  
24 have used this type procedure, someone who the parties agree  
25 on or the Court selects who can devote time to issue reports

1 and recommendations to the Court on issues that come up. So  
2 I think the idea makes sense and it then would be up to us to  
3 confer and see what we can propose to you in the submissions.

4 THE COURT: I want to make clear that the  
5 magistrate judge, and I see Magistrate Judge Majzoub is here,  
6 may very well still get the discovery disputes but, of  
7 course, we are not talking about -- I don't know, Magistrate  
8 Judge Majzoub, if you were here when you heard them talk  
9 about thousands of disputes. That word thousands is scary.  
10 I don't know if it will become necessary to even add to this  
11 a second person, but I really am looking for to start with a  
12 person who is -- who knows this business, perhaps somebody  
13 who knows the auto business would be really nice, but who is  
14 a great administrator because this needs administration and  
15 facilitation.

16 I am not so worried about how to resolve a  
17 discovery dispute because certainly I could do it, our  
18 magistrate judge could do it. It is just the volume that may  
19 lead us out to somebody else to do it, but in terms of the  
20 administration that requires somebody with special skills and  
21 somebody who can be fair to both sides, and needs to have a  
22 good grasp of what is going on here.

23 Somebody else wanted to --

24 MR. HANSEL: Good morning, Your Honor. Greg Hansel  
25 for the direct-purchaser plaintiffs. May it please the

1 Court, just a few comments on the suggestion of a  
2 facilitator.

3 It appears that the Court has decided that Your  
4 Honor would like to appoint someone in that capacity. And,  
5 of course, the direct purchasers will be happy to work with  
6 the defendants, the other plaintiffs, the different plaintiff  
7 groups, to see if we can reach an agreement on someone who  
8 meets the criteria that Your Honor just put forward; a strong  
9 administrator, perhaps someone even with a background in the  
10 automotive industry, someone who could help, for lack of a  
11 better word, coordinate and ride herd over a lot of the  
12 administrative details in this case.

13 To date the parties have done a lot of that on  
14 their own, and not --

15 THE COURT: Yes, you have.

16 MR. HANSEL: -- notwithstanding, you know, the  
17 concerns that have been raised today, I will say we are sort  
18 of proud we have reached agreement on a lot of the agreed  
19 orders, it has taken months and months sometimes but we have  
20 reached agreements on a lot of agreed orders, stipulations  
21 that I think have smoothed the process so far. And I must --

22 THE COURT: Well, let me interrupt you there,  
23 because I don't mean in any way by this suggestion to  
24 denigrate what you've done. You have worked amazingly well  
25 together, I certainly recognize that, my staff recognizes it.

1 I just see as we go into the discovery we need protocol, we  
2 need coordination, and it's something that you need somebody  
3 who is independent of both sides to say this is the way it  
4 should be.

5 MR. HANSEL: That makes a lot of sense, Your Honor.  
6 Two more comments. Direct purchasers disagree with  
7 Panasonic's assessment that the sky is falling in this case.  
8 We think the case is going smoothly and will continue to go  
9 smoothly, and we think it is manageable.

10 One of the core principles of that is that it is  
11 Your Honor who is the ultimate decisionmaker on issues of  
12 merits, and we do not understand that Your Honor is proposing  
13 that a special master or facilitator would start making  
14 merits determinations. We think that the Court's ultimate  
15 authority here is really what drives agreements that are made  
16 in the conferences that we have in between these status  
17 conferences, the conferences among the parties. Thank you.

18 THE COURT: I'm not advocating any authority.  
19 Okay. Let's just say I would like you to meet and confer, to  
20 come up with suggestions and a proposed order appointing  
21 under Rule 53 a master who will coordinate and develop  
22 protocol for discovery and other administrative matters as  
23 they arise. However that's worded, I want it clear that I  
24 have the final say-so -- and what I have the final say-so and  
25 what matters that you will deem this person, whatever we call

1 him. I hate to call him a master, I don't know why I don't  
2 like that word, facilitator or administrator, you know, what  
3 his or her duties will be and what he or she has the final  
4 say-so.

5 I'm going to ask that the attorneys, perhaps  
6 through your lead attorneys, with the defendants -- the  
7 problem is with so many defendants we don't have a  
8 defendants' group so anybody who wants to participate will,  
9 of course, be able to participate.

10 MR. WILLIAMS: I wanted to make a point on what  
11 Your Honor just said. We need a defense liaison. It is  
12 customary in these cases to have one.

13 THE COURT: Yes.

14 MR. WILLIAMS: And throughout the course of this we  
15 have worked well and people have acted in that role, but we  
16 don't have somebody designated to be the point person, and we  
17 need that.

18 THE COURT: Defendants are shaking their heads.

19 MS. SULLIVAN: Well, Your Honor, just as the  
20 plaintiffs have multiple liaison counsel, I think that the  
21 defendants' side could probably work together to identify  
22 multiple liaison counsel but I don't think it is possible to  
23 have one lawyer representing all of the defendants in all  
24 separate and unrelated 29 product cases.

25 THE COURT: I don't think it is possible either but

1 it would be nice if you got together and formed some kind of  
2 a group amongst you less than all the defendants, but even  
3 that I am not so concerned with right now. I want to get  
4 this other person in line, and I think these things will  
5 naturally develop from that. So I am interested in doing  
6 this relatively quickly, I do not want to delay in this  
7 matter for something like this. I'm going to ask -- do you  
8 think two weeks is sufficient time for you to do that, at  
9 least to the point of suggesting names to me?

10 MR. WILLIAMS: Yes, for plaintiffs.

11 THE COURT: Defense?

12 MS. SULLIVAN: Yes, Your Honor.

13 THE COURT: Anybody else on the defense want to  
14 speak?

15 (No response.)

16 THE COURT: Okay. Let's do that. Let me -- I will  
17 tell you what, today is the 4th, Wednesday, let me ask you to  
18 submit something in writing by Friday, the 20th.

19 There also, of course, would have to be provisions  
20 for payment. I know that you all know more about that than I  
21 do so however this is to be paid amongst all parties. Okay.

22 MR. WILLIAMS: Steve Williams again.

23 There is an issue a little bit later in the agenda  
24 but I think it is part of this issue. In the wire harness  
25 case there was an item for a deposition protocol, and all of

1 the issues we've been talking about from the plaintiffs' side  
2 are within there, the coordination, the need to avoid  
3 duplication. We think that the better course is not to have  
4 that deadline but to have that worked out with whoever is  
5 chosen under Rule 53.

6 THE COURT: Oh, no, definitely, that deposition  
7 protocol will be worked out with whoever this person is. No,  
8 that's one of the reasons why I took this route actually.

9 MR. WILLIAMS: Thank you.

10 THE COURT: Okay. Any other comments?

11 (No response.)

12 THE COURT: All right. Going on in our agenda, the  
13 status of the settlements?

14 MR. BARRETT: Don Barrett again, and Warren Burns.

15 Over the last year or so, Your Honor, the auto  
16 dealers' and the end-payors' counsel have worked closely  
17 together in most areas of the litigation but especially in  
18 settlement discussions. This has really facilitated  
19 settlement negotiations at least with those defendants who  
20 have had enough sense to sit down and talk with us.

21 We've previously announced a settlement to Your  
22 Honor with Nippon Seiki a couple of status conferences ago.  
23 Today we are pleased to announce four new settlements with  
24 Lear, with AutoLiv, with TRW and with Yazaki. Your Honor, we  
25 are not free yet for the next few days to disclose the

1 amounts of all of these settlements but I will say that the  
2 numbers are quite substantial and they are going to make the  
3 class members, and we certainly hope the Court, very, very  
4 pleased.

5 We would note that in settling with Yazaki in  
6 particular that this is a major accomplishment in light of  
7 Yazaki's significance as a large supplier of wire harnesses.  
8 We think that this litigation is headed in the right  
9 direction, Your Honor. Mr. Kessler is just wrong; of course  
10 there is an end in sight to this litigation.

11 MR. BURNS: Warren Burns with Susman Godfrey for  
12 the end payors.

13 Mr. Williams, my co-counsel, alluded to this  
14 earlier, a few weeks ago Deputy Attorney General  
15 Bruce Schneier noted in an interview that it is a very, very  
16 safe assumption that U.S. consumers paid more, and sometimes  
17 significantly more, for their automobiles as a result of this  
18 conspiracy.

19 We are not in a position to announce amounts and we  
20 won't get into that here, but I think it is a very, very safe  
21 assumption that this is a significant step forward in this  
22 litigation, and particularly it is a significant step forward  
23 to make sure that the victims of this conspiracy, American  
24 consumers and automobile dealers, are compensated for their  
25 damages.

1 I would add one final thing. The settlements also  
2 include robust cooperation clauses from each of the  
3 defendants we have settled with today, and we certainly took  
4 that into account as we were negotiating with them in valuing  
5 these settlements.

6 I think it is also a very safe assumption, Your  
7 Honor, that as we are forced further and further down this  
8 litigation road that the way we view cooperation and the way  
9 we assess and value that in the context of successive  
10 negotiations and settlements will change, and we hope the  
11 defendants will recognize that simple fact.

12 THE COURT: I do have one question on -- AutoLiv  
13 was the one that I knew about that came in. Are you ready  
14 yet for me to set dates for you to have a preliminary  
15 hearing?

16 MR. BARRETT: Yes, ma'am. We were talking about --  
17 that was what I was going to bring up. We would hope that --  
18 and we have not talked to all of the defendants about this  
19 but we have just -- we are hoping that the Court could set  
20 the preliminary approval hearings for all of these four on  
21 one day, July 14th, 15th, 16th preferably, maybe the 17th as  
22 an alternate. If the Court --

23 THE COURT: Well, I'm looking at the schedule and  
24 July 14th is a Saturday. I love you but I'm not coming in.

25 MR. BARRETT: I don't mean for it to be.

1 THE COURT: The 16th is a Monday, the 17th is a  
2 Tuesday. How long --

3 MR. BARRETT: July 14th is a Monday.

4 THE COURT: I'm sorry, I'm in June. Let me get  
5 into July. I'm trying to push you a little faster. Okay.

6 Do you think that an hour and-a-half, two hours, if  
7 there are four of them?

8 MR. BARRETT: A couple hours.

9 THE COURT: Okay.

10 MR. BURNS: Your Honor, we will confer with each of  
11 the defendants on those dates if that week looks generally  
12 open to y'all -- or to the Court?

13 THE COURT: I will tell you what, it is not  
14 generally open, but I will give you any of those days in the  
15 afternoon and I will move what I have so that you can  
16 coordinate that.

17 MR. BARRETT: Thank you, Your Honor. We will be  
18 back to the Court seasonably on that.

19 THE COURT: All right.

20 MR. KANNER: Good morning, Your Honor.

21 THE COURT: Good morning -- after -- no, it is  
22 still morning.

23 MR. KANNER: Is it still morning? It is, indeed.  
24 Steve Kanner on behalf of the direct-purchaser class.

25 I can only make a comment that, borrowing a little

1 bit from Mark Twain, that the reports of the apocalypse in  
2 this courtroom are somewhat exaggerated and premature.

3 I would like to report on three items this morning  
4 by way of status and in terms of new developments.

5 The first is the instrument panel cluster, which  
6 the Court heard us talk about on the 15th of May. We are  
7 currently awaiting the customer information from the  
8 defendants which is produced -- is to be produced within  
9 60 days of our hearing for preliminary approval, which was  
10 May 16th. The hearing for final approval is set for  
11 November 5th, and we will come back to that in a moment.

12 The second matter is the settlement with Lear  
13 which, as you know, we introduced to this Court some time  
14 ago. And that settlement, of course, had a wrinkle in the  
15 sense that it had to be approved by the bankruptcy court  
16 before we could move for preliminary approval here.

17 THE COURT: Right.

18 MR. KANNER: That approval took place in the  
19 Southern District of New York by Judge Groper on May 27th.  
20 The appeal period on that order expires on June 10th. We  
21 would expect to file our motion for preliminary approval on  
22 June 11th. Obviously we could have a hearing on preliminary  
23 approval 18 or 19 days thereafter, and so certainly there is  
24 an opportunity to coordinate this so that Your Honor can hear  
25 multiple hearings on the same day, and we are open to trying

1 to do that to maximize the efficiency of this Court.

2 As I also understand it, Your Honor entered an  
3 order on the stipulation with the defendants to produce the  
4 customer lists for purposes of notice within 60 days.

5 THE COURT: I think that was just entered  
6 yesterday?

7 MR. KANNER: It was, indeed, so that's in motion,  
8 and the subsequent dates for the summary notice and the  
9 related stips will, of course, be dependent on this Court's  
10 ruling on the motion for preliminary approval, so it is  
11 hard to -- I don't want to put the cart before the horse, but  
12 we would certainly be eager to have that motion for  
13 preliminary approval heard at the Court's earliest  
14 convenience within that time period, 18 or so days from  
15 June 11th, which puts us into that category that my  
16 colleagues from --

17 THE COURT: That July date you might get in on the  
18 same --

19 MR. KANNER: I don't see any reason why we  
20 couldn't, Your Honor.

21 THE COURT: Okay.

22 MR. KANNER: And if experience is a factor over  
23 here, the hearing on the motion for preliminary approval for  
24 Nippon Seiki, of course in the absence of any objections, and  
25 that's the only but-for over here, didn't take much more than

1 a half hour.

2 THE COURT: Right. Why don't you coordinate that  
3 with them and talk to my staff? I suggest you contact  
4 Molly Roehrig up here -- Molly, I think they know you -- to  
5 set this up, and then she will deal with Kay Doaks since she  
6 is new to make sure we have the time and rearrange the  
7 schedule to accommodate that.

8 MR. KANNER: Certainly.

9 THE COURT: Okay.

10 MR. KANNER: The third item, Your Honor, of course  
11 I think my colleagues for the end purchasers and auto dealers  
12 alluded to, and that relates to the settlement which was  
13 filed before Your Honor yesterday on the AutoLiv matter with  
14 the direct-purchaser plaintiffs. It is a substantial  
15 settlement, I won't go into discussing it because it has just  
16 been filed before the Court, and those discussions which we  
17 would like to have are more suitable for the hearing on  
18 preliminary approval. That can also take place anytime two  
19 and-a-half weeks from today. If Your Honor would be disposed  
20 to couple that with those -- with the motions referred to by  
21 the other plaintiffs, we can do that, otherwise we are  
22 prepared to move for preliminary -- to hear preliminary  
23 approval anytime this Court would give us a date, which we  
24 could do frankly in two and-a-half weeks, we can still do  
25 that third week of June if Your Honor is inclined to have

1 that hearing.

2 THE COURT: We could do that but I think it might  
3 be better just to do them all on the same date just for our  
4 coordination.

5 MR. KANNER: Certainly, Your Honor.

6 THE COURT: If we need more time, you know, instead  
7 of starting at 2:00 we can do 1:00 to 5:00 or 1:00 to 4:00 so  
8 that we can get them all in.

9 MR. KANNER: That's fine, Your Honor. Our interest  
10 is to maximize the efficiencies over here.

11 THE COURT: Okay.

12 MR. KANNER: There currently under discussion with  
13 defense counsel on that AutoLiv settlement is a production of  
14 the customer lists because, of course, that's a requirement  
15 for us to send out notice, and I hope to be able to report to  
16 this Court shortly that we have reached an agreement and that  
17 those will be presented in due course.

18 A final matter on this, Your Honor, and it tends to  
19 bleed into the arguments on the motions to dismiss for the  
20 OSS case. Counsel for AutoLiv will represent to the Court  
21 certainly that their involvement in the motion to dismiss  
22 will be altered as a result of the settlement.

23 THE COURT: Okay.

24 MR. KANNER: Thank you very much.

25 THE COURT: Thank you very much, Mr. Kanner.

1 Counsel?

2 MR. SANDERS: Your Honor, this is Parker Sanders,  
3 I'm counsel for Kyungshin-Lear Sales and Engineering Sales.

4 We heard just for a moment about the date in July.  
5 I just want to go ahead and mention I have a conflict that  
6 entire week, I'm going to be out of the country.

7 THE COURT: And you are for Lear so we need you?

8 MR. SANDERS: Yes, Your Honor, I'm for  
9 Kyungshin-Lear Sales and Engineering, so I just wanted to --

10 THE COURT: Well, I'm going to want you fellows to  
11 work together to find a date. If it doesn't work that week,  
12 you know, we can accommodate you, I will accommodate you, you  
13 just give me a couple dates and we will take care of it.  
14 Okay.

15 MR. SANDERS: Yes, Your Honor. I am happy to do  
16 that, I just wanted to go ahead and put it on the record.

17 THE COURT: Thank you very much. Okay. Anything  
18 else?

19 MR. KANNER: Your Honor --

20 THE COURT: Mr. Kanner?

21 MR. KANNER: -- my only consideration is that we  
22 are trying at some point to coordinate -- hoping to  
23 coordinate final approval hearings.

24 As you may recall, on the 16th I mentioned that the  
25 final approval hearings, which do take on a different

1 significance and are more of a robust hearing, we would like  
2 to try to coordinate Lear final approval hearing with the  
3 Nippon Seiki.

4 THE COURT: The November date?

5 MR. KANNER: Yes, that November date which  
6 ultimately -- the further out we push the Lear hearing it  
7 becomes an impossibility.

8 THE COURT: Well, maybe you can move it up. If you  
9 need to separate them and we can't do them all the same day  
10 then we can't, so just keep it in mind.

11 MR. KANNER: I just wanted to raise that  
12 possibility.

13 THE COURT: Whatever date we need. I agree with  
14 you that that November date would be really nice to have all  
15 of those --

16 MR. KANNER: And that might be another -- we will  
17 just go with that, Your Honor. As that date -- as we  
18 approach this if we feel a need to move with Lear earlier we  
19 will address that with counsel and the Court.

20 THE COURT: All right.

21 MR. MAROVITZ: Good morning, Your Honor.  
22 Andy Marovitz, I'm counsel for Lear Corporation.

23 I just wanted to make clear that Lear and  
24 Kyungshin-Lear are two separate defendants. The slight  
25 confusion is because those two defendants are parties to the

1 settlement agreements for the dealer plaintiffs and for the  
2 end-payor plaintiffs. For the direct-purchaser plaintiffs  
3 only Lear is a signatory to that. And I can assure the --

4 THE COURT: Kyungshin-Lear is not on that one?

5 MR. MAROVITZ: They are not a party to that case.

6 THE COURT: Yes.

7 MR. MAROVITZ: I assure the Court, and we have  
8 worked cooperatively with plaintiffs' counsel and we can  
9 probably even do it today at some point during a break, that  
10 we will work to find a date. It is in Lear's interest in  
11 this matter given the fact that Lear did not plead guilty,  
12 was not found guilty, did not pay a fine, but frankly looking  
13 around the room the Court can understand how expensive these  
14 cases are and its interest in getting out of it. Lear wants  
15 to be out as quickly as possible, and is hoping to get the  
16 preliminary and final approval process done as expeditiously  
17 as possible.

18 So we will meet with plaintiffs' counsel today and  
19 with Mr. Sanders today to try to find a date. We very much  
20 appreciate your accommodation in terms of fitting us in when  
21 you can, and Lear will continue to do its best to resolve all  
22 of the cases as quickly as possible.

23 THE COURT: Well, it is interesting that you  
24 mention that looking around the room and why you would be  
25 interested in settling because I looked at the hours that the

1 plaintiffs -- different plaintiff groups submitted, because  
2 the Court does keep track of that, I don't know the hours  
3 that the defense groups have put into this case but I have to  
4 assume it is significant. So on my way home last night I'm  
5 thinking remember in the old days, you may not be old enough  
6 to remember this, but we used to settle cases, we will say,  
7 okay, nuisance value, attorney fees. So I thought, well,  
8 let's make this a nuisance value case; if everybody puts in  
9 what they have got in attorney fees to date we probably have  
10 plenty enough to settle this, so keep that in mind.

11 MR. MAROVITZ: We are very reasonably priced, Your  
12 Honor.

13 MR. KANNER: There might be some at this table that  
14 look at it other than nuisance value, just for the record.

15 THE COURT: All right. Anything else on that?

16 (No response.)

17 THE COURT: All right. The next item is the wire  
18 harness matters. We have had some updates.

19 MR. SQUERI: Yes, Your Honor. Steven Squeri from  
20 Jones Day here on behalf Yazaki.

21 As was announced earlier, our client has entered  
22 into an agreement with the auto dealers and the end payors  
23 concerning a settlement. However, we are still in the case  
24 because we also have the claims that are brought against us  
25 by the direct purchasers and also the City of Richmond has a

1 complaint pending at this time.

2 As the Court knows, I'm just referring to the first  
3 item on the agenda for wire harnesses, the parties recently  
4 concluded the negotiation and stipulation for the  
5 supplemental discovery plan.

6 THE COURT: Right.

7 MR. SQUERI: I just might point out that this comes  
8 after more than seven months of very hard negotiations  
9 between plaintiffs and defense counsel, and we also have had  
10 briefing with the Court in between, we had the issue  
11 argued -- issues argued extensively at the last hearing but  
12 fortunately we were able to come to a conclusion.

13 I do want to personally extend thanks to Mr. Hansel  
14 and Mr. London, the direct-purchaser counsel, whom I had an  
15 opportunity to work with extensively as we finalized this  
16 plan, and we are happy that we were able to get it done, and  
17 as the Court knows I think it was filed about two weeks ago  
18 and the Court entered the order approximately a week or so  
19 ago.

20 Just to sum up what we have accomplished there  
21 because I think it is important to understand where we are  
22 and what may be immediately under the -- on the horizon,  
23 based upon that plan we came up with provisions that deal  
24 with the coordination of discovery among the three class  
25 cases as well as the related case that was filed by

1 Ford Motor Company. We came up with a schedule for the  
2 service of comprehensive document requests which, in fact,  
3 has been already concluded. Those document requests have  
4 been served, there have been responses, and the parties are  
5 engaged in the meet-and-confer process. Under the plan we do  
6 have a schedule in place for resolving disputes, and then  
7 once disputes are resolved for the production of documents to  
8 take place.

9           Significantly with respect to that, just so the  
10 Court knows what may be on the horizon, based upon what the  
11 parties agreed there is certainly a June 23rd deadline for  
12 the conclusion of the meet-and-confer process with respect to  
13 document request issues as the comprehensive document  
14 requests. The parties can by agreement extend it. I don't  
15 think there have been any extensions agreed to as of yet, but  
16 what that also means is that that becomes a deadline for the  
17 filing of either motions to compel discovery or motions for  
18 protective order related to any of those issues that cannot  
19 be resolved. And I just want to point that out to the Court  
20 given the fact that we are talking about the facilitator here  
21 and how that might or might not fit into that particular  
22 process.

23           Relatedly, the supplemental discovery plan also  
24 says that depositions can take place. Once the deposition  
25 protocol is completed they can be noticed. Under the plan

1 that was agreed to by the parties and filed and signed by the  
2 Court, the deadline for concluding the deposition protocol  
3 would be coincidentally June 23rd, it's technically 30 days  
4 after the order is filed. So once again we have something  
5 that may be on the horizon to discuss with a facilitator,  
6 although I know some of the counsel, Ms. Sullivan primarily  
7 for the defendants, have been engaged in a number of  
8 communications with plaintiffs' counsel in trying to arrive  
9 at that, but we do have that deadline, and whether or not a  
10 facilitator is going to be required to resolve anything I  
11 guess we don't know just yet but the parties have been  
12 engaged in discussion on that particular issue.

13           Beyond that we have dealt with other issues like  
14 maximum number of interrogatories, deadlines for written  
15 discovery, and some of it is tied to the end of the DOJ stay,  
16 which for wire harnesses may be earlier simply because of the  
17 fact that we were the first of the auto parts cases that were  
18 filed in recent years. And there is also a specific  
19 provision that deals with scheduling of class certification  
20 briefing that we discussed last time that we were here, and  
21 what is provided in the plan is that the parties are  
22 required, and this was in accordance with the Court's  
23 instruction at the hearing the last time, the parties are  
24 required once the DOJ stay is entered -- excuse me, lifted, I  
25 should say, with respect to wire harnesses, that the parties

1 are required within 30 days thereafter to suggest to the  
2 Court what the schedule might be for briefing, but I think  
3 that generally sums up where we are.

4 THE COURT: I do want to say on wire harness, which  
5 is ahead of the other cases, I know there are discussions as  
6 to when the class motion should be filed, but I do think we  
7 may very well be able and I'm going to hold off on any  
8 ruling, I want to see with this facilitator and how easy that  
9 goes in, the wire harness may very well be its own and go  
10 ahead and let's start looking at what we are looking at here  
11 for classes. So please don't think or get the impression  
12 that I am intending to hold wire harness back. Okay. So I  
13 say that for both sides. I don't know yet where it is going  
14 but I would like to move forward with one of these and let's  
15 see where we are going with class cert.

16 MR. SQUERI: Okay. We would agree, Your Honor.  
17 Thank you.

18 THE COURT: All right. Ms. Sullivan?

19 MS. SULLIVAN: Hello, Your Honor. On the  
20 deposition protocol, Mr. Squeri is correct that we do have a  
21 deadline of June 23rd in the supplemental discovery plan  
22 currently, but I agree with Mr. Williams that we should  
23 probably vacate that deadline given that some of the issues  
24 that are in dispute and that will require the facilitator are  
25 imbedded within that protocol, so I think we should take that

1 June 23rd deadline off the table and hopefully we won't have  
2 to start from scratch and that the six weeks of negotiations  
3 that we had relating to other provisions in the protocol we  
4 will be able to build on as we now work with the facilitator,  
5 but I think that June 23rd deadline probably doesn't make any  
6 sense.

7 THE COURT: Thank you. Mr. Williams?

8 MR. WILLIAMS: Thank you. I actually was going to  
9 say what Ms. Sullivan said, but I also wanted to respond to  
10 the comments about how wire harness progresses in that  
11 certification motion, and simply state for at least our group  
12 that we would simply request that judgment be reserved until  
13 the stay is lifted, and we know how it looks because we as  
14 the party who makes the motion might have a different  
15 proposal to make to the Court how we do that.

16 THE COURT: Judgment is reserved, I just want you  
17 to know. I don't want you to assume anything because the  
18 faster we can move along with these obviously the better.  
19 Counsel?

20 MS. LEUNG: Good morning, Your Honor.  
21 Kanchana Leung on behalf of Ford Motor Company.

22 I am pleased to report that the proposed  
23 supplemental discovery provisions have been agreed upon and  
24 have been entered by the Court last week.

25 While I'm up here I want to seek clarification

1 about the discussion on the special master and facilitator  
2 because Ford had also received Rule 45 subpoenas and their  
3 deadlines for us to complete our meet-and-confer process, and  
4 I just want to clarify that that would also be subject to  
5 whatever facilitator or special master was appointed?

6 THE COURT: Yes, absolutely, Ford would be in  
7 there.

8 MS. LEUNG: Thank you.

9 THE COURT: That would be also true of the City of  
10 Richmond.

11 MS. QUADROZZI: Good morning, Your Honor.  
12 Jaye Quadrozzi from Young & Associates on behalf of the City  
13 of Richmond.

14 I want to introduce Leslie Weaver to the Court.  
15 She is from the Green & Noblin firm with whom we are serving  
16 as local counsel.

17 THE COURT: Okay. Thank you.

18 MS. GREEN: Good morning, Your Honor.

19 THE COURT: Good morning.

20 MS. GREEN: I and my firm represent the City of  
21 Richmond, which filed a complaint on February 20th of this  
22 year. We have asserted claims that were on behalf of  
23 indirect purchasers of similarly-situated states, state  
24 subdivisions, agencies and instrumentalities, so that would  
25 include municipalities, certain counties, et cetera.

1 THE COURT: Wait a minute. Say that again.

2 MS. GREEN: We have asserted claims for indirect  
3 purchasers who were excluded from the end-payor class, and  
4 what was excluded expressly by the end-payor purchasers were  
5 essentially municipalities, state subdivisions, et cetera, so  
6 that would include the City of Richmond, California who was  
7 the plaintiff with whom we filed our first case. We are also  
8 representing in this matter not yet filed but Oakland County,  
9 Michigan, Traverse City, Michigan and a few other  
10 municipalities, a county in North Carolina, a city in  
11 New York. We anticipate being retained by additional state  
12 subdivisions. We are also coordinating with other state  
13 agencies and entities, this is all in the works right now in  
14 this action, for the 19 states which have repealer statutes  
15 which allow municipalities to bring claims.

16 And the reason that we are here, Your Honor, is our  
17 firms and our co-counsel have facility representing  
18 municipalities and state subdivisions, and we became aware  
19 that because of the exclusion those entities that purchase  
20 our police cars and our ambulances, et cetera, would be  
21 excluded from recovery in these cases if an individual  
22 purchaser did not step forward, which is what the City of  
23 Richmond did first, and we anticipate additional filings to  
24 follow in cases other than wire harness although that's the  
25 only case which is currently on file.

1 THE COURT: Well, you have these municipalities  
2 that you've talked about like Traverse City and --

3 MS. GREEN: Yes.

4 THE COURT: What's to prevent many more  
5 municipalities coming in?

6 MS. GREEN: We have asserted class claims, Your  
7 Honor, so the issue we are hoping we can discuss with you  
8 today is what we had put on our civil cover sheet is just  
9 creating a class pursuant to the December 23rd, 2013  
10 electronic case management protocol to give us classification  
11 of 2.13-CV-00106, akin to the dealer direct and indirect  
12 purchaser classes, and we would represent them.

13 THE COURT: Yes. In terms of the classification,  
14 that's something I put on here too, and we are going to  
15 create a new category, like we have 01 is direct and 02 and  
16 03 are the indirects, and you would be, because we have Ford,  
17 06, and we will call that the public entities' category.

18 MS. GREEN: Thank you, Your Honor.

19 THE COURT: While we are on that, we noted there  
20 are some errors in the CM/ECF and we are going to start  
21 working on that. So if you see other errors -- if you see  
22 errors please just drop a note or an e-mail to us so that we  
23 can correct this. We know while we are talking about it, not  
24 to confuse everything, but on that 2311, that list is not in  
25 chronological order and had to do with the way things were

1 originally -- an individual case was entered on, and there is  
2 no way to fix it. The CM/ECF program does not provide for  
3 any way to scramble -- to sort those in chronological order.  
4 So when you see that you might have, you know, 0010 and then  
5 skip to 0015 or something, you just have to look through that  
6 list to get your part; there is no numerical order.

7 MS. GREEN: Thank you. And just to report a little  
8 bit on the work we have done since we filed. We have been  
9 coordinating and are familiar with the outstanding counsel  
10 for the different plaintiff classes, so we have been  
11 participating in the discussions regarding the deposition  
12 protocol, the discovery protocol, et cetera, and I think your  
13 ruling today will also enable us to the extent there are  
14 defendants out there also wishing for global relief that we  
15 can act on behalf of the claims asserted as well. We  
16 appreciate your ruling.

17 There is -- I can report the defendants have  
18 declined to accept service --

19 THE COURT: You are in Hague right now?

20 MS. GREEN: Sorry?

21 THE COURT: You are at the Hague right now?

22 MS. GREEN: Exactly, we are. We served our papers  
23 on the central authority in Japan on April 25th. We are told  
24 it will take 60 to 70 days to serve and then another 60 to 70  
25 days to get the proof of service back, and so to the extent

1 we would like to move forward we would appreciate it if the  
2 defendants would accept service, they have declined to do so,  
3 so that is the schedule we are currently on, but in the  
4 meantime we are coordinating for as smooth a transition as  
5 possible so we can engage in discovery in step with everybody  
6 else once we are let out of the gate, as it were.

7 THE COURT: Okay. And you will participate in the  
8 selection process for the facilitator?

9 MS. GREEN: Yes, Your Honor, we will.

10 THE COURT: Okay. Thank you.

11 MS. GREEN: Thank you.

12 THE COURT: Oh, and the same thing, by the way, in  
13 Richmond about the schedule for the motions to dismiss, you  
14 can discuss scheduling with the facilitator but you can go  
15 ahead and file those that you are prepared to file right away  
16 without any waiting.

17 MS. GREEN: Okay, Your Honor.

18 THE COURT: The next item is discussion and  
19 scheduling of direct-purchaser plaintiffs' motion for an  
20 order directing defendants in the direct-purchaser class  
21 action wire harness to identify settlement classes.

22 MR. SPECTOR: Good morning, Your Honor.

23 THE COURT: Good morning. We haven't heard from  
24 you today.

25 MR. SPECTOR: There was no need up until this

1 point.

2 THE COURT: Okay.

3 MR. SPECTOR: That order was entered yesterday,  
4 Your Honor.

5 THE COURT: Mr. Spector, for the record, would you  
6 put your name --

7 MR. SPECTOR: Yes, Your Honor. Eugene Spector for  
8 the direct-purchaser plaintiffs.

9 That order was entered yesterday. We worked out a  
10 stipulation and hope to do the same thing in the AutoLiv case  
11 with the defendants.

12 THE COURT: Very good. Thank you.

13 MR. SPECTOR: Thank you.

14 THE COURT: Thank you. So we don't need anything  
15 else on that. All right.

16 I think the next thing is to go into the bearings  
17 motions. I'm looking at motions pending and I have -- that's  
18 under B on the 3-B. The first one, oral arguments are  
19 waived, and second one --

20 (An off-the-record discussion was held at  
21 11:30 a.m.)

22 THE COURT: Molly, always being on top of things,  
23 said why don't we skip the motions to the end in case some of  
24 you want to leave, and I think that's a great idea, so let's  
25 skip the motions and go right to the next item, which would

1 be number six, I believe. Administratively the next status  
2 conference is October 8th at 10:00. Everybody's still in  
3 agreement October 8th at 10:00?

4 I have also gone ahead and set the next one, so let  
5 me get your comments if there is any problem with the date,  
6 after the October 1st is January 25th of 2015.

7 MR. FINK: Is that a Sunday?

8 THE COURT: Is it a Sunday? I certainly don't want  
9 to do it on Sunday.

10 MR. FINK: I will bring bagels, Your Honor.

11 THE COURT: Well, well, maybe we can do it then.  
12 Let me take a look here. You're right, I did that well. How  
13 did I do that? We want to do it on a Wednesday.

14 January 28th? Actually if I could read my own  
15 writing that is probably an 8. January 28th? Okay.  
16 October 8th and then January 28th.

17 Now, I reviewed the schedule and I saw many parts  
18 have all of their service done, and so I would like to do --  
19 have motion hearings or waived motion hearings, depending  
20 when you get there, on a number of those where service is  
21 complete, so I'm going read you the numbers. I need my sheet  
22 to tell me what they are. 0800, that's anti-vibrational  
23 rubber parts; 1000, that's the radiators; 1300, which is the  
24 switches; 1500, which is motor generators; 1600, steering  
25 angle sensors; 1700, HID ballast; 1900, electronic powered

1 steering assemblies; 2100, fan motors; 2300, power window  
2 motors; and 2800, windshield washer systems.

3 MR. KESSLER: Jeffery Kessler for the Panasonic  
4 defendants.

5 I think the issue is, and I just don't know if  
6 plaintiffs can answer, is whether or not any amended  
7 complaint is going to be filed because we did stipulations on  
8 a schedule based on the prospect that there would be an  
9 amended complaint. So right now, for example, in the cases  
10 of 1300, the switches, and 1600, the steering angle sensors,  
11 and 1700, HID ballast, there is only one defendant, my  
12 client, Panasonic, and we have been told there is going to be  
13 an amended complaint but none has been filed.

14 So I think service is not the issue, the question  
15 is are they standing on their complaint? If they are  
16 standing on that complaint then we can proceed but I don't  
17 know the answer.

18 MR. WILLIAMS: The answer is we are going to file  
19 them and serve them real soon. What we would like to do is  
20 get away from -- I think it made sense before to have the  
21 extended briefing periods we had, but now that we are seeing  
22 most of the issues have been addressed by the Court to  
23 shorten that schedule so we can get these things briefed,  
24 submitted to the Court, decided, and all of us can move  
25 forward.

1 THE COURT: When are you going to submit the  
2 amended complaint?

3 MR. WILLIAMS: We should be serving the amended  
4 complaint no later than next Friday and potentially sooner,  
5 and we will speak with counsel for Panasonic beforehand. I  
6 think our stipulation provides for us to talk to you about  
7 that.

8 THE COURT: Of course, the amended complaint you  
9 are adding defendants?

10 MR. WILLIAMS: I think we are, they have to  
11 conspire with someone.

12 THE COURT: I mean, that makes a difference.

13 MR. KESSLER: Those defendants may not be in this  
14 MDL, Your Honor, so I don't know how we can discuss the  
15 schedule --

16 MR. WILLIAMS: Those defendants may be in this  
17 courtroom right now, Your Honor.

18 MR. KESSLER: I mean, that's the problem, Your  
19 Honor, until we at least get plaintiffs on a schedule, they  
20 have to file all of their amended complaints in all of these  
21 29 actions so at least in the 29 actions we know who all the  
22 defendants are and can get them served. Putting aside future  
23 actions, how do we do a schedule? That's the problem.

24 MR. WILLIAMS: Your Honor, we need to stop --

25 THE COURT: We will do that, and our facilitator --

1 see, that's a wonderful thing, somebody needs to keep track  
2 of that. And I did have a note here whether you were going  
3 to amend, and I guess it wasn't mentioned.

4 MR. WILLIAMS: We will soon, and we would like to  
5 move forward.

6 MS. KAFELE: Your Honor, Heather Kafele on behalf  
7 of JTEKT.

8 I will also like to note with Mr. Kessler --

9 THE COURT: On behalf of who?

10 MS. KAFELE: JTEKT, J-T-E-K-T.

11 That the electronic power steering assembly case is  
12 similarly situated to Mr. Kessler's cases insomuch as we are  
13 the only defendants so far in that case. There hasn't been  
14 an amended complaint, so service isn't the issue, it is the  
15 same thing as Mr. Kessler --

16 THE COURT: All right. What I want plaintiff to do  
17 is submit to the Court within one week of today and the  
18 defendants if they are going to amend the complaint and who  
19 they are going to add, and then we will see can you do a  
20 shortened schedule and still stay on track or not. I don't  
21 know and you don't know because you don't know who your  
22 co-defendants are going to be, so we will have to see.

23 MS. KAFELE: Okay.

24 THE COURT: I will -- all of those that will be  
25 amended I will give you the proposed date, you have the

1 proposed date, those of you who are in the litigation right  
2 now of October 8th. If you need to adjourn that just submit  
3 an order.

4 MR. KESSLER: That's the date to file the motion,  
5 Your Honor?

6 THE COURT: Pardon me?

7 MR. KESSLER: That's the date to file the motion,  
8 or you said October 8th, that's the hearing date?

9 THE COURT: That's the hearing date, but you may  
10 submit an order --

11 MR. KESSLER: We will submit a schedule after the  
12 defendants are named and whether it is possible to do it or  
13 not.

14 THE COURT: I will keep it on October 8th so I can  
15 keep track of it at this point and then file a motion to  
16 adjourn that date.

17 MR. WILLIAMS: What I would like to suggest is that  
18 the October 8th date could be a backstop, but as we suggest  
19 in our motion, if oral argument is not necessary for the  
20 Court that perhaps it can just be submitted and maybe even  
21 decided before that date.

22 THE COURT: Obviously if you waive oral argument  
23 then just let me know.

24 MS. ROMANENKO: Your Honor, Victoria Romanenko from  
25 Cuneo Gilbert --

1 THE COURT: Excuse me one minute because we are  
2 getting dates here. Okay. The filing date for the motion  
3 would be July 14th, if you could do it by July 14th, that's  
4 to file the motion to dismiss. August 25th for the response.  
5 September 8th for reply.

6 MR. WILLIAMS: I'm sorry, Your Honor, just to be  
7 clear, in which cases -- is that in all the cases?

8 THE COURT: These are in all the cases that I just  
9 mentioned, all of the cases I just mentioned. The Court  
10 understands some of those where you are going to do an  
11 amended complaint may need to have a motion -- a short motion  
12 to the Court to adjourn the date because defendant doesn't  
13 even know they are being sued right now. Okay. That's to  
14 keep it on track. July 14th, August 25th, September 8th.

15 I'm sorry, Counsel. Go ahead.

16 MS. ROMANENKO: Victoria Romanenko for dealership  
17 plaintiffs.

18 Just to clarify, within a week we will advise the  
19 Court and the defendants as to whether we will be adding  
20 additional defendants to the actions that Your Honor has  
21 listed as ready for amendment and briefing?

22 THE COURT: Right, and you will be adding those  
23 defendants like forthwith, right?

24 MS. ROMANENKO: Yes.

25 THE COURT: Because you've had time.

1 MR. KESSLER: Your Honor, I'm sorry to raise  
2 another point about this. So in the cases I have mentioned,  
3 the three matters, there's no direct-purchaser case at all  
4 let alone an amended complaint, and so the question is is  
5 there going to be a date by which we know whether there is  
6 ever going to be a direct-purchaser case? Is that going to  
7 be off track? That's true in a number of these dockets as  
8 well, there is simply no case and so not only do we not know  
9 the defendants, we don't know anything about it, so I just  
10 pose that to direct purchasers as to what the status is.

11 THE COURT: So we need a date -- a cutoff date for  
12 amendments of the complaints anyway to add --

13 MR. KESSLER: It wouldn't be amendment, it would be  
14 the first case, but if it is going to be part of the  
15 schedules then we have to have something.

16 MR. SPECTOR: Well, Your Honor --

17 THE COURT: I don't want you to sit there and think  
18 who am I going to sue to get it in.

19 MR. SPECTOR: Well, that seems to be the question,  
20 doesn't it, Your Honor?

21 Eugene Spector, again, for the direct-purchaser  
22 plaintiffs.

23 Your Honor, if we have been retained by a client we  
24 have filed suit. If we have not been retained by a client we  
25 cannot file suit. At this point we have not been retained by

1 clients in those cases in which we have not filed suit and  
2 therefore I can't answer the question that has been raised by  
3 Mr. Kessler. I don't think any of us can.

4 THE COURT: Okay. Then we are just going to assume  
5 we have what we have right now unless you notify them in the  
6 next week that there are other parties to be added, we are  
7 just going to go on that.

8 MR. SPECTOR: And, Your Honor, obviously we will  
9 file suit if we are retained and promptly notify the Court  
10 and the parties.

11 THE COURT: Okay.

12 MR. SPECTOR: Thank you.

13 THE COURT: All right. So let's see now, we are  
14 set for October 8th. We noted in several of those, like  
15 Panasonic was the only defendant in several of them, and the  
16 other was Mitsuba, there was another defendant that was the  
17 only one, so I hope they can be coordinated.

18 MR. KESSLER: I think the issue will be who the  
19 other defendants are, we don't know who they are, how they  
20 will be served, or even who their counsel is.

21 THE COURT: Okay.

22 MR. WILLIAMS: Your Honor, I'm sorry, that's not an  
23 issue. There is no complaint, there is nothing to respond  
24 to. We keep bringing up things that aren't issues. We could  
25 have a settling defendant who is not named as their

1 co-conspirator, so I think I would just like to avoid  
2 raising --

3 THE COURT: We like to bring up all issues.

4 MR. WILLIAMS: -- prospective things that don't  
5 matter.

6 THE COURT: We need more to talk about. Don't  
7 worry about it. That's okay. All right. So the schedule is  
8 out.

9 Then there is the request for judicial notice but  
10 we have received your responses on that so the Court is  
11 ready -- will do an opinion on the judicial notice issues,  
12 particularly Docket No. 136.

13 Other matters, I had the preliminary approval for  
14 AutoLiv but we have talked about those settlements so we  
15 don't need that.

16 Does anybody have any other matter to discuss  
17 outside of the motions which we will have to argue?

18 (No response.)

19 THE COURT: Nobody? Yay. Okay. All right. We  
20 will then -- let's take a break or do you want to go to lunch  
21 for an hour and come back and do the motions?

22 MR. KESSLER: Your Honor, if it is possible to not  
23 take the lunch break, we don't think the arguments are going  
24 to be that long and we can drive through, that I think would  
25 at least help out-of-town counsel if that's possible?

1 THE COURT: I'm more than willing to do that.  
2 Let's take about ten minutes right now and then we will start  
3 our argument.

4 MR. KESSLER: Thank you.

5 THE COURT: Thank you all.

6 THE LAW CLERK: All rise.

7 (Court recessed at 11:43 a.m.)

8 — — —

9 (Court reconvened at 12:01 p.m.; Court, Counsel and  
10 all parties present.)

11 THE LAW CLERK: All rise. You may be seated.

12 THE COURT: All right. We have something for the  
13 record on the Lear. Counsel?

14 MR. MAROVITZ: Thank you, Your Honor.

15 Andy Marovitz for Lear Corporation and Steve Kanner for the  
16 direct-purchaser plaintiffs.

17 We had a chance during the break to find a  
18 convenient date for counsel for Lear, for Kyungshin-Lear as  
19 well as counsel for the direct-purchaser plaintiffs, the  
20 dealer plaintiffs and end-payor plaintiffs for the  
21 consideration of the preliminary approval hearing, and  
22 July 1st, with the Court's indulgence, would work for all of  
23 those groups. We are hopeful that would be convenient for  
24 the Court.

25 THE COURT: All right. Let me -- that's a Tuesday?

1 MR. KANNER: I think that's a Monday.

2 THE COURT: It's a Tuesday, July 1st, 2014 is a  
3 Tuesday.

4 MR. KANNER: Okay.

5 THE COURT: Is that okay? I can't change the  
6 calendar.

7 MR. KANNER: You have judicial authority, Your  
8 Honor.

9 THE COURT: All right. Let's pick a time. I do  
10 have -- I do have something at 3:00 but if we could do it in  
11 the morning. Is that good? Now, you are coming from out of  
12 town?

13 MR. MAROVITZ: I am but at your convenience, Your  
14 Honor. July 1st works for us?

15 THE COURT: Do you fly in in the morning or --

16 MR. MAROVITZ: It depends how early. Will you give  
17 us just ten seconds?

18 (An off-the-record discussion was held at  
19 12:03 p.m.)

20 MR. KANNER: We were just clarifying, Your Honor,  
21 the requirement -- the local requirement in between the date  
22 for filing the motion for preliminary approval and the  
23 hearing date. And I believe if we file on the 18th --

24 MR. MAROVITZ: On the 11th.

25 MR. KANNER: On the 11th of June, excuse me, we do

1 just make it, so the hearing could be on July -- actually it  
2 could be July 1st, 2nd, in that time period.

3 THE COURT: Well --

4 MR. KANNER: But before we set the date we wanted  
5 to make sure we are in compliance.

6 THE COURT: You think you can do it? If we do it  
7 July 1st that would be a good date?

8 MR. MAROVITZ: That's right.

9 THE COURT: Let's do it July 1st, it really won't  
10 take all that long, so how about 11:00?

11 MR. KANNER: 11:00 is fine, Your Honor.

12 MR. MAROVITZ: Thank you, Your Honor.

13 MR. KANNER: Thank you very much.

14 THE COURT: Okay. All right. Going on then to the  
15 motions, the first one I have to be argued is the NTN motion  
16 to dismiss all class actions.

17 MR. KESSLER: Yes, Your Honor. It is  
18 Jeffery Kessler again.

19 The only connection between NTN and Panasonic --

20 THE COURT: Just one minute, Counsel. I want to  
21 pull up the motion.

22 MR. KESSLER: Thank you, Your Honor. I'm appearing  
23 for NTN and NTN USA.

24 Let me start out by saying that we are not seeking  
25 in this motion to reargue, to change, to alter any of the

1 legal rulings that you've made in your prior decisions in  
2 wire harnesses or in instrument panel clusters or anything  
3 else. We fully understand the standards you have adopted and  
4 the reasoning you have applied and we accept all of that, so  
5 this is not an attempt to reargue.

6 What we do believe, Your Honor, is that applying  
7 each and every one of the standards this Court has pronounced  
8 applied to the specific allegations regarding NTN and  
9 NTN USA, that plaintiffs have not met their burden under  
10 those standards of this Court. What plaintiffs like to say,  
11 and I'm sure they will say it again, is that you have heard  
12 these arguments a million times before, Your Honor, and  
13 everyone is going to get up and make these arguments. With  
14 all due respect to plaintiffs, Your Honor, my arguments are  
15 based on my client's allegations and the facts about what  
16 they said about them. It is not based on anybody else's  
17 allegations. You have never looked at this issue before. So  
18 I hope that you will look at it independently, I know you  
19 will, and I will explain why I believe that these two clients  
20 are entitled to be dismissed from both the direct and the  
21 indirect cases.

22 First of all, Your Honor, let me just review  
23 quickly what there isn't alleged about my client because that  
24 makes it very different from some of the cases you have  
25 already had. There is no allegation that my clients attended

1 any specifically identified competitor meetings concerning  
2 the United States, none. There is nothing identified, there  
3 is no claim. I mean, there is a general allegation all  
4 defendants conspired but there is nothing more specific about  
5 either one of my clients about that.

6 There are no allegations that my clients entered  
7 into any plea agreements because they did not. My clients  
8 have not pled, they have not been charged, okay, so there is  
9 no basis to use that against them in any way.

10 Further, the two pleas that there are in hearings,  
11 which they are certainly entitled to use, don't mention my  
12 client, don't indicate anything about my client. They are  
13 limited to the two companies who pled primarily, not my  
14 clients, so you can't add anything from them. I'm not saying  
15 limit them to the pleas, I'm saying they don't add anything  
16 with respect to my clients. There is no allegations about  
17 what role my client played in the conspiracy, either one of  
18 them, what they did, how they did it. This isn't like wire  
19 harnesses when there was a discussion of the RFQ process and  
20 what happened. There is just nothing there about that.  
21 There is no allegation we had any information exchanges about  
22 the United States, nothing at all.

23 So what is there? So that's what there is not. So  
24 what is there? And, Your Honor, I'm not going to tell you  
25 what there is in my own words. What I urge you to do is they

1 filed their opposition, their opposition from pages 1 to 3  
2 details their statement of the facts against NTN and NTN USA,  
3 so this is it, this is all they have called to your attention  
4 to say here is what we have alleged. When you look at what  
5 they have stated, and that's what I'm going to go through,  
6 and consider it all together -- I'm not -- I'm not telling  
7 you look at it one by one and wipe the slate clean or  
8 anything else that they are going to say, I'm saying look at  
9 it all together but I have to discuss it one by one, Your  
10 Honor, because the English language requires me to do that.

11 THE COURT: I want to get the dates right when  
12 they -- when the Japanese Fair Trade Commission gave the  
13 cease and desist order.

14 MR. KESSLER: I will be happy to address that. The  
15 first thing and most of their brief is about the fact that  
16 the JFTC has issued a cease and desist order and allegations  
17 and charges against NTN, the Japanese company, okay, about  
18 violations of doing something regarding sales in Japan. That  
19 is all, period, end of story. They do not make an allegation  
20 in this complaint -- this is very important -- that the  
21 conduct that the JFTC charged discussed the United States or  
22 discussed any U.S. sales, so this is the pure situation like  
23 in the elevator case in the 2nd Circuit where there were EU  
24 charges filed about a conspiracy involving sales in the EU,  
25 and the 2nd Circuit said you can't just infer just because

1     somebody did something in one market that makes it plausible  
2     they did it elsewhere, and I will explain why.

3             The United States antitrust laws are much tougher.  
4     It is criminal. There are good reasons why to infer the  
5     opposite, that if somebody might do something in a country  
6     like Japan where it is not exactly enforced the same way, or  
7     at least it has not been historically, that they wouldn't do  
8     something here bolstered by the fact that my client has not  
9     been charged in the United States. So we could assume --  
10    they point out -- they plead that my U.S. subsidiary got a  
11    subpoena in the United States. Let's assume that's true  
12    because that's what they pled. So we respond to a subpoena,  
13    we give information to the United States, and the United  
14    States makes no charges against NTN.

15            What those collective facts show is unless you are  
16    willing to become the first court in the country, and I would  
17    say it is the first court to say just because you are charged  
18    in another jurisdiction about doing something in a foreign  
19    company I will just assume like you are a bad company, so it  
20    is plausible and you meet the Twombly test that you did  
21    something in the United States, that doesn't get them past  
22    it. That's the essential issue about that. That's their  
23    failure.

24            The second thing that they allege -- that's almost  
25    half of their facts that they allege is the JFTC, that's what

1 they come back with. What else did they do? After the JFTC  
2 and Japanese proceedings -- and, by the way, they point out  
3 NTN executives are criminally charged in Japan. Same issue,  
4 it is only about doing things in Japan, there is no  
5 allegations they are being --

6 THE COURT: What were they doing in Japan?

7 MR. KESSLER: They are charged, Your Honor, with  
8 having engaged in price fixing involving sales in Japan  
9 which, of course, are not subject to the United States  
10 antitrust laws. Again, Your Honor, you can't draw the  
11 inference that just because they might have or might not  
12 have, they are defending so I don't want to say they have,  
13 just because they have been charged there you can't draw an  
14 inference and say here, especially when the Department of  
15 Justice has looked at it here and has done nothing, and when  
16 the pleas here, the two pleas very clearly don't relate to  
17 the behavior of my client in terms of that in the United  
18 States.

19 We can assume -- it is interesting, they point out  
20 that NSK and JTEKT were in the Japanese case also, in other  
21 words, they are charged in Japan also. Okay. So one would  
22 assume that if they had information to implicate us in the  
23 United States, something as part of the pleas that were  
24 entered or as part of the leniency application that was made,  
25 the department would have that information and charge our

1 client about that, but they haven't done that because, Your  
2 Honor, there is nothing to charge my client about in the  
3 United States. So, again, it is all based on solely  
4 something in another market. There have been cases and they  
5 pointed out some --

6 THE COURT: Okay. Let me go back though. I still  
7 want to get these dates. JFTC issued its cease and desist  
8 order in 2013; was that right?

9 MR. KESSLER: I believe that's correct, Your Honor.

10 THE COURT: And it alleges the price fixing from  
11 what period to what period?

12 MR. KESSLER: It was 2010 going forward. That's  
13 what was charged in the JFTC order. Again, nothing about  
14 this earlier period which, again, their conspiracy they  
15 allege in the United States and about which they have pleas  
16 from other defendants is different conduct, a different  
17 period of time involving the United States so, again, it is  
18 just separate about them and that again the case I would  
19 refer Your Honor to is the elevator case in the 2nd Circuit.

20 Now, they do cite cases where foreign allegations  
21 have been looked at where the plaintiff had facts saying here  
22 are foreign charges and I am now alleging facts that during  
23 those foreign meetings there was this discussion about the  
24 United States. So in that context the court said oh, well,  
25 we can look at that together as part of the different courts

1 that have said that. There are no such allegations here,  
2 that's very significant. They don't allege that at the  
3 meetings that the JFTC charged in 2010 there was any specific  
4 discussion about the United States and the United States  
5 prices or anything involving the United States. So that's  
6 their gap and that's what the courts have said is not enough  
7 to get through the hurdle. Even if they have enough to get  
8 through the clients who did pleas, obviously somebody pled in  
9 the United States, they may have something to say about them,  
10 it doesn't bring in our client necessarily.

11 Now, what else do they say? In addition to that,  
12 and this is all that they say, they say that NTN's United  
13 States subsidiary has been served with a DOJ subpoena. Okay.  
14 How does that help them? I think that goes the other way.  
15 You know, they have been served with a subpoena, they have  
16 been investigated by the DOJ and the DOJ has done nothing.  
17 How does that support an inference -- a Twombly inference  
18 that we participated in a conspiracy in the United States?  
19 So that's their next one.

20 One after that, NTN USA is a wholly owned  
21 subsidiary of NTN Corporation. That obviously doesn't  
22 advance the ball on anything, Your Honor herself has noted  
23 that, that doesn't move anything particularly here because  
24 there is nothing against the parent, so being a sub of the  
25 parent doesn't move anything.

1           Then they go during the class period USA's  
2 activities have been under the control and direction of  
3 NTN Corp. Even assume that's true, it doesn't advance the  
4 ball because there is nothing to connect anything. The acts  
5 done by NTN USA were authorized, ordered and condoned by  
6 their parent company but there are no acts alleged. So,  
7 again, there is like a fundamental gap.

8           I'm reading literally every single thing they said  
9 after the JFTC. Through its wholly-owned and controlled  
10 subsidiaries, NTN Corp has marketed, manufactured and/or sold  
11 bearings -- automotive bearings purchased throughout the  
12 United States. Well, that's true too, okay, but unless it  
13 can be guilt by association the fact that they have sold in  
14 the United States can't be enough.

15           And here is the last one -- I'm sorry, there's  
16 something after that. NTN USA manufactured, marketed and/or  
17 sold bearings that were purchased in the United States during  
18 the class period, including by firms that sold them to the  
19 dealership plaintiffs and the class members. That's it for  
20 NTN.

21           Their final paragraph is the market is conducive to  
22 conspiracy because they have alleged there are high barriers  
23 to entry, it is highly concentrated, and it has opportunities  
24 to conspire.

25           Your Honor, take every single allegation in their

1 complaint, take everything they said from page 1 to 3 of  
2 their brief, okay, and they do not advance the ball on  
3 Twombly with respect to my two clients who have not pled  
4 guilty, who have not been charged in the United States.

5 My final point, Your Honor, I don't know if they  
6 are going to raise the EU thing because that's what they  
7 filed the judicial notice motions before you, but if Your  
8 Honor let's that in, and we argue you should not, but let's  
9 assume you let it in for a moment, if you let it in that's  
10 only specifically about the EU. If you read the press  
11 release they charge it is something very specific about the  
12 EU, a different conspiracy, a different time period, and by  
13 the way, only automotive, nothing to do with industrial.

14 Remember the directs have an added burden than the  
15 indirects because they have alleged an industrial bearings  
16 conspiracy. There is nothing about the U.S. and industrial  
17 bearings for my two clients.

18 So, Your Honor, I hope that you will scrutinize  
19 those allegations, and I'm quite confident you will not find  
20 another case in this MDL docket or any other case in the  
21 country that has said this is enough against these two  
22 defendants. Thank you very much.

23 THE COURT: Thank you. Response?

24 MR. DAVIDOW: Joel Davidow for the dealer  
25 plaintiffs.

1           Let me start for a moment with the obvious  
2 comparison between an elevator and a ball bearing. As far as  
3 I know, if you wanted an elevator for a building here in  
4 Detroit you wouldn't have it made in Europe and put it on a  
5 ship and mail it because it is very big and very heavy and  
6 very wasteful. But if you wanted ball bearings would you  
7 possibly get them from Europe and Japan? The answer is  
8 people do every day. There is a worldwide trade. Ball  
9 bearings are small, they are made in all sizes and all shapes  
10 to meet all needs. The idea that there is -- because there  
11 is no world trade in elevators there is no world trade in  
12 ball bearings is nonsense.

13           To take a particular example, there has been a  
14 five-year anti-dumping case called certain ball bearings from  
15 Japan and including automotive. Well, an anti-dumping case  
16 only starts when the U.S. industry complains that Japanese  
17 imports into the United States are growing too fast. That  
18 case was now dismissed, there is a press release, and it is  
19 dismissed. Well, how do you get it dismissed? The answer is  
20 by pulling your U.S. prices up to your Japanese prices. If  
21 your -- and Mr. Kessler is an expert in anti-dumping, if you  
22 want to get rid of an anti-dumping case you make sure the  
23 U.S. price is exactly the same.

24           To go back let's start with a simple point. In  
25 most books that have a chapter under national antitrust and

1 U.S., and they start with a colloquy between Senator  
2 John Sherman of Ohio, a 6th Circuit person, and a doubting  
3 senator who said, Senator, how are you going to make sure  
4 that if the price fixing is offshore you catch it? And the  
5 senator said well, I'm not going to write a bill just about  
6 restraint of the interstate commerce of the United States.  
7 My bill, the Sherman Act, is going to say that you are guilty  
8 and suable in treble damages if you restrain the interstate  
9 or the foreign commerce of the United States.

10 When the law was clarified by limiting U.S.  
11 application to export sales or purely foreign sales it said  
12 imports were not subject to the reform. In other words,  
13 imports were always a per-se violation. If you fix prices  
14 and it is as to imports the violation of the U.S. law is  
15 complete.

16 Now, let's --

17 THE COURT: If you fix prices --

18 MR. DAVIDOW: As to things that are going to be  
19 imported.

20 Now, here you get to two simple points, there is a  
21 magic word that Mr. Kessler uses and it is the word  
22 concerning the U.S., that is his view is if the Japanese as  
23 they fix their prices in Japan and in 26 European countries  
24 didn't mention the word U.S., that it wasn't a discussion  
25 concerning the U.S. Well, there are two things wrong with

1       that.

2               To take an example, Harry Martin, my original  
3       client, imports Volkswagens. If you have an enormous  
4       price-fixing cartel in the common market, the largest maker  
5       of cars in the common market is Volkswagen, and there will be  
6       NTN or its co-conspirator ball bearings in every Volkswagen  
7       that comes in, and it doesn't matter whether the NTN when  
8       they were fixing the price to Volkswagen said oh, gee, they  
9       are going to the U.S. or they just knew it. If they fixed it  
10      and they knew it they are guilty, full stop, summary  
11      judgment.

12              The same thing, the Lexus is made in Japan. If  
13      they all agree in Japan that all of their prices in Japanese  
14      sales would be up ten percent then they raise the price ten  
15      percent on all of the ball bearings that went to the Lexus,  
16      and when the Lexus is largely sold in the United States and  
17      it is not made here. Well, obviously they know perfectly  
18      well the Lexus is made for the U.S. market but they might not  
19      have mentioned the word U.S. market.

20              THE COURT: So your argument basically is if they  
21      fix the prices in Japan --

22              MR. DAVIDOW: Yes.

23              THE COURT: -- and they know those parts are coming  
24      to the U.S., that's sufficient?

25              MR. DAVIDOW: It is full stop. Let's go further.

1 There was a mention of Europe, and remember I would pose that  
2 there are two ways in which you could accept this judgment of  
3 the common market. One is the judicial notice of foreign  
4 thing, but the other one it says specifically in the press  
5 release, which you have, that NTN got a ten-percent fine  
6 reduction because it admitted its guilt. Well, admissions of  
7 guilt under exception of Federal Rule of Evidence 601, I  
8 believe, are fully admissible unless Mr. Kessler says that  
9 there was some error and his client really didn't admit their  
10 guilt.

11 The next point is we are supposed to show here that  
12 it is plausible that when they agreed to prices in Europe and  
13 when they agreed to prices in Japan they would have  
14 implicitly or explicitly raised them in the U.S. as well.  
15 Well, I would submit that it is implausible that they could  
16 have possibly avoided that. For instance, if they are  
17 selling to Toyota, and they have branches here that sell to  
18 Toyota and branches there, and they raise the price of a  
19 packet of ball bearings from \$4.00 to \$4.40 in Japan, if they  
20 didn't raise it to \$4.40 in the U.S., Toyota being the smart  
21 person would ask, one, how come you are charging me less than  
22 the U.S., or Toyota, being a smart buyer, would start buying  
23 entirely from their U.S. sub.

24 So the only way they can make the conspiracy work  
25 is to tell their sub to exactly match their price to Toyota

1 since they supplied them in both markets and Toyota talks to  
2 each other and have the same price, otherwise they would be  
3 arbitrated against them so that -- and the other point --

4 THE COURT: Who did they conspire with?

5 MR. DAVIDOW: NTN, NSK and so on conspired with  
6 each other in Japan and conspired with each other in Europe,  
7 and they conspired on -- taking the four main defendants in  
8 which NTN received the second highest fine, NSK and NTN,  
9 we're supposed to have fixed all automotive prices in Japan.  
10 Well, prices to Toyota or prices to Lexus are automotive  
11 prices in Japan, but I'm saying that the practicalities --  
12 the plausibility is that it would be implausible for them not  
13 to raise their U.S. price to Toyota simultaneously with their  
14 decision to raise the prices by cartel in Japan so that each  
15 of the conspirators which had branches in the U.S., which sold  
16 to the transplants of the Japanese, would by necessity have  
17 to match those prices in the U.S. to avoid questions or  
18 arbitrage --

19 THE COURT: Okay.

20 MR. DAVIDOW: -- so it is highly, highly  
21 implausible.

22 The further evidence of this, of course, they are  
23 now -- they have conspired with NSK, both in Europe and in  
24 Japan. The NSA guilty plea didn't say NTN was innocent, it  
25 just didn't name who its co-conspirators were. They are

1       treating it somehow as silence is an exoneration of NTN.

2               The extreme of this, by the way, is the potash case  
3       in which Judge Diane Wood actually had a group of Russian and  
4       Canadian price fixers who met and set Canadian and worldwide  
5       potash prices, with a great anti-trust lawyer, said we  
6       exclude the U.S., totally exclude the U.S., which is not  
7       claimed here, and -- but when they sold to the U.S. they said  
8       we sell to you at world-market prices, so world-market prices  
9       have just been set by the cartel.

10              And Judge Wood said well, whether you set U.S.  
11       prices or you tell the U.S. that you have to pay world-market  
12       prices, you have just cartelized the world, it comes to the  
13       same thing, we are not stupid, we understand when you caused  
14       the increase through your cartel activities in the U.S.,  
15       whether you did it by specific orders, by matching orders, by  
16       reference to world-market prices, it is implausible that you  
17       could have a two-price system on a fungible good that you  
18       make here and there for the same cars that travel around the  
19       world in the same goods.

20              The last line I would only say just because I like  
21       the story is Umpire Bill Klem, strict man, and he called  
22       batter out, batter was very annoyed, he threw his bat way up  
23       in the air. Bill Klem said young man, if that bat comes down  
24       you're out of the game.

25              Well, it seems to me that what I would say to

1 Mr. Kessler is that if one ball bearing that you fixed the  
2 price of in Japan or Europe, if you didn't prevent every one  
3 of them from getting here and every one of them from being in  
4 a part that gets here, that every time that one of them gets  
5 here you have lost the Twombly game and, in fact, you have  
6 lost it a million times before this case before we made this  
7 motion.

8 THE COURT: Thank you. Brief?

9 MR. KESSLER: Brief, Your Honor, but it is  
10 significant, very significant, because this argument is  
11 nowhere in their complaint, nowhere in their brief, so we  
12 have never addressed it before, so please indulge me. There  
13 are three strikes so he's out on this argument.

14 Strike number one is contrary to what he just told  
15 you, and we will file a supplemental brief if Your Honor  
16 likes that under the Foreign Trade Antitrust Improvements  
17 Act, which amended the Sherman Act discussion that he spoke  
18 about, it is specifically not enough that you've sold a  
19 bearing in Japan and could imagine that it would be imported  
20 into the United States some day. That is not the legal test.

21 The legal test, as he knows, is either it must be a  
22 discussion to directly affix the import price, the import  
23 price, so when you are importing it for which there are no  
24 allegations in the complaint, none, or -- or it has to have a  
25 direct, substantial and foreseeable effect in the United

1 States. They cannot plead the direct effect, and they have  
2 not pled anywhere in their case the direct effect. There has  
3 been a huge decision on this just now by the 7th Circuit that  
4 is actually on a rehearing en banc. There have been  
5 decisions in other circuits. He has not done anything to  
6 plead the economic effects that are required under the  
7 Foreign Trade Antitrust Improvements Act. I would like an  
8 opportunity to brief that, Your Honor, because I can show  
9 that while he waxed eloquently about this it is legally  
10 wrong. It would be completely wrong.

11 THE COURT: All right.

12 MR. KESSLER: The second thing, Your Honor, is  
13 everything he said is not in his complaint. There are no  
14 allegations in his complaint that at the Japan meetings or  
15 the EU meetings there was a discussion to set a world price  
16 like he alleged about potash. If he alleges that in his  
17 complaint he would violate Rule 11, but if he alleged that in  
18 his complaint then I have to deal with that allegation. He  
19 doesn't get to just come up here and tell Your Honor, Your  
20 Honor, I'm going to tell you it is this, it is that, it is  
21 there. Let him do that under Rule 11. Dismiss the complaint  
22 and see if he will put that under the Rule 11. I don't know  
23 what basis he has to say there were agreements about, but if  
24 you look at the JFTC materials he cited and the EU materials  
25 he cited, they only discuss Japan prices in the JFTC and they

1 only discuss EU prices in the EU, and they say nothing about  
2 export prices to the United States. They say nothing about  
3 import prices to the United States.

4 So he's giving you a hypothetical scenario that is  
5 not in his complaint, that's exactly what you can't do. If  
6 he -- if you want to dismiss with leave to replead, let's see  
7 him try to plead those facts. I don't know what basis he  
8 will have to possibly plead them to tie that here. That's  
9 what the cases say. That's the second strike about this.

10 The third strike here he said to you it is  
11 implausible that you would set a price in Japan and have a  
12 different price in the United States. Well, he also told you  
13 there was a dumping case against bearings. What does a  
14 dumping case mean? It means the allegation was there was  
15 higher prices in Japan than in the United States. That's  
16 what he told you about the dumping case. He didn't plead it.  
17 That gives you a totally plausible reason why you cannot  
18 infer because there were higher prices in one market there  
19 would not be lower prices in the United States. That is what  
20 the dumping laws are about.

21 Now, frankly I have tremendous respect for  
22 Mr. Davidow, he actually was involved in some of these laws  
23 in the Department of Justice, but he's dead wrong about the  
24 FTIA, he's dead wrong about the plausibility here based on  
25 the dumping laws, and there is nothing in his complaint that

1 satisfies that. So, Your Honor, since he's raised these  
2 issues of world effects and jurisdiction, I would request  
3 that we get to file a supplemental brief. Your Honor, it can  
4 be brief, so we can present to you the law on the FTIA  
5 because it was never argued in his brief and never presented  
6 in his complaints.

7 THE COURT: All right. You may file a supplemental  
8 brief, no more than ten pages in seven days.

9 MR. KESSLER: Thank you, Your Honor.

10 MR. DAVIDOW: May I have a moment, Your Honor?

11 THE COURT: May you have a what?

12 MR. DAVIDOW: May I have a moment for a sur-reply  
13 brief?

14 THE COURT: You may file a sur-reply brief.

15 MR. DAVIDOW: No more oral?

16 THE COURT: No more oral. Three days after, no  
17 more than five pages.

18 MR. WILLIAMS: I wanted to make sure I heard, did  
19 you say three days after their brief?

20 THE COURT: Yes.

21 MR. WILLIAMS: And a five-page limit?

22 THE COURT: Right.

23 MR. WILLIAMS: Thank you.

24 MR. MAHR: Good afternoon, Your Honor. I'm  
25 Eric Mahr for Schaeffler AG and Schaeffler Group USA.

1           Just to put Schaeffler -- the two Schaeffler  
2 entities in the context of this morning's discussions,  
3 neither Schaeffler entity has been named in any other suit,  
4 we are only in the bearing suit. Neither Schaeffler entity  
5 has pled guilty.

6           We have two motions, a 12(b)(6) motion and a  
7 12(b)(2) motion. Mr. Kessler just vigorously argued the  
8 12(b)(6) points that we would make also. I would just point  
9 out that plaintiffs' complaint with respect to bearings  
10 focuses particularly on Japanese conduct among Japanese  
11 corporations in Japan affecting Japanese customers. The two  
12 guilty pleas in the bearings cases are Japanese entities, and  
13 Schaeffler is a German company, it is just kind of one step  
14 removed. So I agree with everything Mr. Kessler is saying,  
15 and just note that Schaeffler AG and Schaeffler USA are both  
16 one step removed from that.

17           THE COURT: Okay.

18           MR. MAHR: I also understand that you don't want to  
19 hear the same old thing from us, and I think I do have  
20 something unique because at least for the hearings that I  
21 have been in attendance, I think I will be the first defense  
22 counsel to come to the podium and fully embrace this  
23 principle of consistency that you have established in these  
24 cases, at least as it goes to the 12(b)(2) personal  
25 jurisdiction motions, because applying that principle of

1 consistency, which I take to mean where you have the same  
2 facts you get the same result, applying that principle to  
3 Schaeffler AG and comparing it to the Leoni AG dismissal and  
4 the S-Y Europe dismissals in the wire harness case, the  
5 result is clear that Schaeffler AG should be dismissed for  
6 the same reasons and on the same grounds.

7 In fact, if anything, Schaeffler AG, the minimum  
8 contacts with this jurisdiction of the United States are even  
9 more remote with respect to Schaeffler AG. For example,  
10 Leoni provided financing services, IT services, had bank  
11 accounts in the United States, none of that was enough. But  
12 in the case of Schaeffler AG none of that exists; Schaeffler  
13 AG doesn't have any bank accounts.

14 Also in this case we have made an extensive  
15 affirmative showing, even though it is plaintiffs' burden to  
16 establish personal jurisdiction, we have provided you with  
17 three affidavits. They go through, and I won't go through  
18 them now, you know the test, but they go through the general  
19 jurisdiction test, they go through all of this other machine  
20 factors, all of the Alexander Associates factors concerning  
21 alter-ego jurisdiction, and in each case we have come forward  
22 with a declaration from the relevant people at Schaeffler AG  
23 or Schaeffler USA concerning each of those.

24 The 6th Circuit has made it very clear in the  
25 Carrier vs. Outokumpu case, in the Tennyson vs. Matthews case

1 that, quote, in the face of a properly supported motion for  
2 dismissal a plaintiff must, by affidavit or otherwise, set  
3 forth specific facts showing that the court has jurisdiction,  
4 end quote. That's from Carrier, 673 F.3rd at 449.

5 I say that because not only is it their burden to  
6 establish the Court's personal jurisdiction, but in the face  
7 of our motion they have to come forward with specific facts  
8 and they have come forward with nothing. Our briefs go  
9 through the various allegations they make in their opposition  
10 but not in any kind of affidavit or any other form --

11 THE COURT: There is no affidavit.

12 MR. MAHR: Just to hit on two of them, they state  
13 in their brief that a Mr. Klaus Rosenfeld is CFO of both  
14 Schaeffler AG and Schaeffler USA, and they are wrong on both  
15 counts. With respect to Schaeffler AG, Klaus Rosenfeld is  
16 the CEO of that entity. With respect to Schaeffler USA,  
17 Klaus Rosenfeld has never worked for Schaeffler USA, he's  
18 never been their CFO, CEO or anything else. He's never been  
19 on the board of directors. He has no --

20 THE COURT: Nobody has ever been on both at the  
21 same time in any event?

22 MR. MAHR: We point out a couple. Over the last  
23 ten years there has been a couple instances when the  
24 founders -- this is a company founded by two brothers, one of  
25 their sons, who is still alive, has sat on -- there are

1 different level of boards in Germany, but it is the highest  
2 level of the board in Germany and the board in the United  
3 States. He no longer does but he did for a period.

4 But I think in addition to our affirmative showing  
5 that there is not personal jurisdiction, when you look at the  
6 quality of what they have come back with it really  
7 underscores a lack of a showing on their part. In addition  
8 to the mistakes about Mr. Rosenfeld and other employees, they  
9 actually went out and apparently pulled off the Internet 30  
10 names that they felt were German sounding that Dun &  
11 Bradstreet said were related to the USA entity,  
12 Schaeffler USA, and they said because these 30 people have  
13 German sounding names out of 5,000 Schaeffler USA employees  
14 that there must be some kind of minimum contacts with the  
15 United States of Schaeffler AG, the other entity.

16 Even if that were true it wouldn't be enough, but  
17 we went out and looked at those 30 names, only 9 of them have  
18 ever been employed by Schaeffler USA currently or formerly,  
19 and of those 9 none of them were also simultaneously or  
20 otherwise employed by the German entity Schaeffler AG.

21 THE COURT: Okay.

22 MR. MAHR: So all of this I think makes clear that  
23 there is no basis for personal jurisdiction here and there is  
24 no reason to give them discovery on it because they have  
25 essentially got that by kind of throwing out these

1       allegations and having us respond to them with affidavits and  
2       sworn statements, they really got more information about  
3       Schaeffler AG than they are entitled to.

4               THE COURT:   Thank you.

5               MR. MAHR:   Thank you.

6               THE COURT:   Who is responding?

7               MR. HOESE:   May it please the Court, my name is  
8       William Hoesé, and I'm with the Kohn, Swift firm.  It is  
9       H-O-E-S-E.

10              I'm here to address the motions to dismiss by  
11       Schaeffler AG and Schaeffler Group USA under 12(b)(6) on  
12       behalf of all of the plaintiff groups.  And I'm also here to  
13       address the personal jurisdiction motion filed by  
14       Schaeffler AG also on behalf of all of the plaintiff groups.

15              THE COURT:   Okay.

16              MR. HOESE:   Your Honor, if I could also beg your  
17       indulgence, Mr. Davidow in his argument may have neglected to  
18       mention some allegations in the direct-purchasers' complaint  
19       regarding NTN and the United States market, and at the end of  
20       my presentation regarding Schaeffler, if it's okay with the  
21       Court, I would like to at least put that on the record.

22              THE COURT:   All right.

23              MR. HOESE:   The presentation regarding -- by  
24       Schaeffler on the 12(b)(6) motion was brief but to the point.  
25       However, the standard here is whether it is plausible that

1 the Schaeffler entities were a part of a conspiracy that had  
2 effects in the United States, and as this Court has said with  
3 respect to a number of the other cases, if I may paraphrase,  
4 it is undisputed that price fixing in the bearings market  
5 occurred, and I think that is undisputed. There are two  
6 guilty pleas in the United States by two of the Japanese  
7 manufacturers, and among other things in the guilty pleas the  
8 government says that it would have proven that had it gone to  
9 trial that these Japanese manufacturers, NSK and JTEKT,  
10 participated in a conspiracy with other bearing  
11 manufacturers, plural. So the suggestion that it was limited  
12 to these two I think doesn't -- isn't borne out by what the  
13 Government said.

14           There is also an attempt to downplay the connection  
15 between the European governmental action against all of the  
16 defendants in this case, every single one of them, as well as  
17 some others, were caught up in the EU investigation. And if  
18 I may read for a second from the EC press release, the  
19 European Commission have found that two European companies,  
20 SKF and Schaeffler, and four Japanese companies, JTEKT, NSK,  
21 NFC, which is Nachi-Fujikoshi, and NTN with its French  
22 subsidiary, operated a cartel in the market for automotive  
23 bearings. The companies colluded to secretly coordinate  
24 their pricing strategy vis-à-vis automotive customers for  
25 more than seven years from April 2004 until July 2011 in the

1 whole European economic area, which I didn't know was 26  
2 countries until Mr. Davidow mentioned it.

3           Going further, the companies involved in this  
4 secret cartel coordinated the passing on of steel-price  
5 increases to their automotive customers, colluded on requests  
6 for quotations and for annual price reductions from customers  
7 and exchanged commercially sensitive information. This  
8 occurred through multi, tri and bilateral contacts.

9           And with respect to Schaeffler, Schaeffler as well  
10 as some of the Japanese and the Swedish company benefited  
11 from reductions of fines under the 2006 leniency notice for  
12 their cooperation. The reductions reflect the timing of  
13 their cooperation and the extent to which the evidence they  
14 provided helped the commission to prove the existence of the  
15 cartel. These guys turned themselves in after the  
16 investigation started. That's Schaeffler.

17           And if I may also say Schaeffler is not a public  
18 company but because it borrows lots of money does prepare  
19 annual reports. Schaeffler started to disclose because of  
20 the -- it didn't want to run afoul, I guess, of not telling  
21 potential creditors of problems, antitrust problems, what it  
22 said, and this is in the -- for example, in the 2011  
23 Schaeffler annual report, and this is by the Schaeffler  
24 Group, the Schaeffler AG --

25           THE COURT: All of them. Okay.

1 MR. HOESE: They hold themselves out as an integrated  
2 worldwide group, and I can't go through the entire  
3 superstructure, which is all of these other holding companies  
4 above Schaeffler AG, but as I will mention with respect to  
5 the 12(b)(2) motion, Schaeffler AG is the holding company  
6 that manages all of the operating companies, so it really --  
7 and we will get into the control aspect of it, but in 2011  
8 Schaeffler writes, and this is a public document, in late  
9 2011 several antitrust authorities have commenced  
10 investigations of several manufacturers of rolling and plain  
11 bearings for the automotive and other industrial sectors.  
12 The authorities are investigating possible agreements  
13 violating antitrust laws. Schaeffler AG and some of its  
14 subsidiaries are subject to these investigations. Schaeffler  
15 goes on to say it is cooperating. Essentially it makes the  
16 same disclosures in 2012. So this is Schaeffler AG that is  
17 under investigation and its subsidiaries.

18 Here Schaeffler has the Schaeffler Group USA, and  
19 the Schaeffler Group USA manufactures and sells essentially  
20 all the bearings for the Schaeffler Group in the United  
21 States and other countries of North America. Not only does  
22 it manufacture and sell them here to 23 auto manufacturers,  
23 as set forth in the Schaeffler annual reports, and tier one  
24 and two component part manufacturers, ball bearings made in  
25 Germany are also imported by the Schaeffler Group USA and

1       presumably sold in the United States.

2               So all of these are indicia that Schaeffler was  
3       involved in this conspiracy. Not only that, we have the  
4       Japanese, which you talked to Mr. Davidow about, both the  
5       civil and the criminal activities that were uncovered and  
6       prosecuted in Japan. The Japanese as well import bearings  
7       into the United States, and there was a discussion about what  
8       that shows, and I'm certainly not prepared to address that  
9       today, but these allegations about Japanese investigations,  
10      prosecutions that resulted in guilty verdicts, multi --  
11      hundreds of millions of dollars worth of fines, the United  
12      States Department of Justice has brought two cases and has  
13      subpoenaed Schaeffler Group USA as well.

14              THE COURT: Schaeffler AG does not manufacture or  
15      sell any product?

16              MR. HOESE: That's my understanding, Your Honor,  
17      that it does not manufacture or sell directly, it operates  
18      through its various subsidiaries around the world, one of  
19      which is the Schaeffler Group USA, which is in South  
20      Carolina, but Schaeffler Group North America, I mean, they  
21      really kind of have different expressions for what I think is  
22      the same thing, has a center in Troy, Michigan as well, not  
23      that the contacts have to be with Michigan with respect to  
24      personal jurisdiction, but they serve the auto industry in  
25      the U.S.

1           The Japanese guilty pleas relate to the auto  
2 industry in the U.S. It said the discussions were in the  
3 U.S. and elsewhere. They sold to Japanese manufacturers and  
4 component suppliers in the United States and elsewhere.

5           Just when you put all of this together with the  
6 allegations that the Court found sufficient in wire harness,  
7 heater control, instrument panel cluster, of the market  
8 structure, again, here these -- the defendants have  
9 60 percent of the market. Schaeffler is one of the top three  
10 it says in industrial and in automotive. The fact that there  
11 are all high barriers to entry, there is a free flow of these  
12 materials we believe pushes our complaint and the allegations  
13 in the complaint, and again I'm speaking about all of the  
14 complaints, over the line to plausibility.

15           Perhaps before I get into the 12(b)(2), if I could  
16 just mention the NTN, Your Honor?

17           THE COURT: All right.

18           MR. HOESE: I apologize for having to do it but I  
19 think it is important. In the direct-purchaser complaint,  
20 consolidated amended class action complaint, which is  
21 Document 100 filed in the bearings cases, there is a  
22 discussion of the U.S. bearings market starting on page 27  
23 and going to page 28, and it talks about exportation of  
24 bearings by NTN, NSK, Nachi-Fujikoshi and JTEKT, where we  
25 allege that they exported on average 55 percent of their

1 bearings to the United States and Europe, and that the  
2 United States imports 40 percent of its bearings from Asia.  
3 We also allege that NTN derives the majority of its revenue  
4 from sales within the United States.

5 In paragraph 118 we also allege that prices in the  
6 United States increased during the same period that the  
7 Japanese and other bearings manufacturers have admitted to  
8 conspiring to raise bearing prices outside of the United  
9 States.

10 We also make allegations, although this didn't  
11 arise, about control of the U.S. subsidiaries by the Japanese  
12 parents. Specifically we allege that NTN had a complete  
13 shadow-management structure to oversee sales of bearings in  
14 the United States, and that defendants and their  
15 co-conspirators, domestic pricing was also controlled by  
16 foreign parents with a foreign entity acting as suppliers of  
17 the domestic subsidiaries. So I just wanted to bring that to  
18 the Court's attention that there were more allegations in the  
19 direct-purchasers' complaint regarding NTN and the linkage  
20 being demanded by the defendants between activities that did  
21 take place in Japan and affects in the United States.

22 THE COURT: Okay. Let's go back to Schaeffler.

23 MR. HOESE: Yes, Your Honor. Thank you for  
24 indulging me.

25 Schaeffler AG -- well, let me start and say that

1 the question presented by Schaeffler's motion is whether it  
2 would be fair and just under the circumstances to exert  
3 personal jurisdiction over Schaeffler AG. We believe that we  
4 have presented enough facts or otherwise for the Court to  
5 find that Schaeffler AG is the alter ego of Schaeffler Group  
6 USA, or that there is sufficient contacts with the United  
7 States by Schaeffler AG, and in addition that the Calder  
8 effects test, which the Carrier decision pointed to, enhanced  
9 some of the -- or all of the facts that we have asserted that  
10 would allow the Court to take jurisdiction.

11 As I mentioned, given the circumstances that our  
12 burden because the Court is relying on written submissions is  
13 relatively slight, and I won't go through all of the  
14 standards which the Court has already set forth in its  
15 opinions, but the pleadings and the affidavits do have to be  
16 viewed in the light most favorable to the plaintiffs, and the  
17 Court should not weigh controverting assertions of the party  
18 seeking dismissal here, Schaeffler AG.

19 What the plaintiffs need to do at this stage is  
20 make out a prima facie case that the Court has jurisdiction,  
21 and we believe that we have.

22 As I mentioned before, the Schaeffler AG is at the  
23 top of this -- it is almost at the top of the pyramid but it  
24 is responsible as Mr. Rosenfeld, who was mentioned by  
25 Schaeffler's counsel, stated in his declaration, which we

1 attached as Exhibit 8 to our response, that Schaeffler AG is  
2 the management holding company covering the operating  
3 business of Schaeffler AG and its majority-owned subsidiary  
4 entities collectively called the Schaeffler Group, and we  
5 will get to him in a minute.

6 Among other things, Schaeffler files consolidated  
7 financial statements, and I'm not saying every time a company  
8 files consolidated financial statements it shows a level of  
9 control necessary for the Court to pierce the corporate veil,  
10 but here I think the rules that allowed Schaeffler to do that  
11 and which it has done for many years are indicia of control.  
12 These are IFRS-10 consolidated financial statement rules.

13 In order for a company to legally be able to  
14 consolidate or under the accounting rules consolidate the  
15 entities it controls it has to meet three tests. IFRS-10  
16 further defines control as follows: An investigator, and  
17 that would be Schaeffler AG I believe in this circumstance  
18 because it is the one consolidating all of the financial  
19 statements, controls an investee if, and only if, all of the  
20 following elements are met, and the first one is power over  
21 the investee, that would be Schaeffler Group. The investor  
22 has existing rights that give it the ability to direct the  
23 relevant activities, and in parens, the activities that  
24 significantly affect the investee's return, which I read to  
25 mean that what it sells, who it sells to and so on. The

1 investor has to have exposure or rights to variable returns  
2 from its involvement with the investee.

3 And one of the affidavits -- and I don't understand  
4 this, Mr. Crowe said that no part of the revenue of  
5 Schaeffler Group USA goes to Schaeffler AG based upon the  
6 filing of the consolidated financial statements. I'm not  
7 sure how that can be true, but I am not -- it may be an  
8 intermediate company where it goes first, I don't know.

9 And three is the ability to use its power over the  
10 investee to affect the amount of the investors' returns.  
11 Again, to me that says it can tell them what to do or what  
12 not to do in order it make more money, make less money, sell  
13 to this person, not sell to this person. So it's in effect  
14 it is Schaeffler and its other operating company are one  
15 entity operated by Schaeffler AG, and the Carrier court found  
16 that important.

17 Let me -- I think also that the declarations that  
18 Schaeffler AG put in provide facts in addition to the ones  
19 that we alleged about control and contacts that provide even  
20 more evidence that we have presented a prima facie case.  
21 What is admitted by Schaeffler AG? It indirectly owns  
22 100 percent of Schaeffler Group USA's stock. That's been  
23 considered a factor by courts in the 6th Circuit in trying to  
24 determine if personal jurisdiction is appropriate.

25 Schaeffler AG says Schaeffler AG board members

1 occasionally travel to the United States to attend meetings  
2 and trade shows, but who travels here, how often they travel  
3 here, where do they go, what do they do, who do they meet?  
4 If they go to trade shows they are going to tell me that they  
5 never meet with a customer in the United States of a  
6 Schaeffler bearing? Maybe it is true, but we don't know and  
7 that's something we wouldn't be able to know until we took  
8 discovery.

9           It was touted that Schaeffler didn't provide some  
10 of the services that Leoni does, but Schaeffler AG in its  
11 declarations states that it provides a limited number of  
12 administrative services to Schaeffler Group USA, Inc. and the  
13 many other Schaeffler Group companies around the world  
14 including tax and legal coordination services, accounting  
15 coordination services in connection with the consolidated  
16 annual account of the Schaeffler Group, so they said it right  
17 in their declaration.

18           They then go on to say Schaeffler AG personnel  
19 occasionally visit the United States to provide these  
20 services. Again, who, how often, what services, are they  
21 paid for, how much, if not why not, we don't know yet.

22           Schaeffler AG board members -- this is Schaeffler  
23 telling us this -- have held positions on the board of  
24 directors of Schaeffler Group USA, Inc. For example,  
25 Juergen Geissinger was on the Schaeffler Group USA board from

1 2005 to 2013. He's the CEO of Schaeffler AG.

2 George F.W. Schaeffler, again, the son of the founder, is an  
3 80-percent owner of the Schaeffler Group, was a  
4 Schaeffler Group USA board member from 1996 until 2010, and  
5 he serves --

6 THE COURT: But he wasn't on both of them at the  
7 same time?

8 MR. HOESE: Well, he was on the board -- I'm sorry,  
9 Your Honor. If I could ask you to repeat your question?

10 THE COURT: It wasn't simultaneously?

11 MR. HOESE: I believe Mr. Geissinger and  
12 Mr. Schaeffler were both on the Schaeffler Group USA board at  
13 the same time; Mr. Geissinger was on from 2005 to 2013, and  
14 George Schaeffler was on between 1996 and 2005, so -- excuse  
15 me, 2010, so that's an overlap of five years.

16 Schaeffler AG provides corporate communication and  
17 investor relation services for Schaeffler Group USA.

18 Schaeffler AG provides some, and this I'm taking from  
19 Mr. Crowe's affidavit, some of -- by implication some of  
20 SG USA's capital, and Schaeffler Group USA purchases some  
21 supplies from Schaeffler AG.

22 Now, the -- Mr. Crowe's declaration was designed to  
23 look at the factors set forth in the Alexander case, but the  
24 Alexander case was -- again, it was a Michigan law -- it was  
25 construing Michigan law about what was necessary, and my

1 reading of the Michigan cases is that it is not necessarily  
2 the same as what is required under the law in federal court,  
3 that Michigan may be more limited in terms of allowing the  
4 exercise of personal jurisdiction.

5 THE COURT: Okay.

6 MR. HOESE: If I may, I wanted to mention, it was  
7 said that we made some mistakes in the complaint regarding  
8 crossover of officers, Mr. Rosenfeld for one. Again, I'm not  
9 saying everything on the Internet is true by any stretch of  
10 the imagination but there was backup for all of the  
11 allegations that were made and there was a -- just to defend  
12 our honor, a -- let me see -- oh, something called  
13 Inside View listed Klaus Rosenfeld as the CEO of the  
14 Schaeffler AG, that's the basis for that allegation. They  
15 claim it is untrue, but at this stage we don't know yet, we  
16 haven't spoken to Mr. Rosenfeld.

17 With respect to Mr. Geissinger where we said that  
18 he was the CEO of Schaeffler AG and Schaeffler Group USA,  
19 that was part of the executive profile and biography that was  
20 put up by Business Week. So, again, these weren't  
21 allegations that were just pulled out of thin air, there was  
22 a basis for making these allegations, and at this point I  
23 believe under the standards that the Court isn't to weigh  
24 which one is accurate or which one isn't.

25 THE COURT: Okay.

1 MR. HOESE: So I think based upon the allegations  
2 that we made in the complaint regarding control,  
3 participation in the conspiracy by Schaeffler AG, which seems  
4 to be borne out by the EC decisions so far, that we have  
5 presented a prima facie case for personal jurisdiction over  
6 Schaeffler AG.

7 THE COURT: Thank you.

8 MR. HOESE: Thank you very much, Your Honor.

9 THE COURT: Reply?

10 MR. MAHR: Just three points, Your Honor.

11 First, on the 12(b)(6) I just wanted to make clear  
12 that the EC decision press release clarifies that the conduct  
13 there involves specific RFQs in Europe for European  
14 customers, so it is not so easy to make this jump to the  
15 United States.

16 As the elevators case said, you have to have  
17 adequate allegations that the transactions or the RFQs in  
18 Europe had effects here in the United States. You just can't  
19 say that because they did it over there they must have done  
20 it over here.

21 Second point with respect to the EC press release,  
22 I just want to emphasize it has nothing at all to do with  
23 personal jurisdiction over Schaeffler AG. Whatever  
24 Schaeffler AG may or may not have done in Europe doesn't  
25 enhance its minimum contacts with the United States as a

1 jurisdiction.

2           You already have ruled that there is not a  
3 conspiracy personal jurisdiction theory in the 6th Circuit,  
4 you held that in the S-Y Europe case, and that all it would  
5 go to and there is just no such theory.

6           Also, that the fact of the EC press release doesn't  
7 distinguish Schaeffler AG from Leoni AG or from S-Y Europe,  
8 your previous dismissals on personal jurisdiction grounds,  
9 because in both of those cases there were also press releases  
10 and also findings by the European Commission under the very  
11 same settlement procedures that those companies had engaged  
12 in conduct in Europe. That didn't change the minimum  
13 contacts analysis in the United States.

14           And finally with respect to the various 12(b)(2)  
15 arguments by Mr. Hoese, again, nothing he said distinguishes  
16 in any way Schaeffler AG from Leoni AG or from S-Y Europe.  
17 Holding yourself out as a corporate family to the public  
18 doesn't mean that your holding company has minimum contacts  
19 to the United States.

20           And the idea -- I think he said -- I haven't seen  
21 this in a complaint, I haven't seen this in an affidavit, but  
22 he said that Schaeffler USA imports bearings while at the  
23 same time manufacturing them here. If it imports bearings  
24 from Europe it doesn't import them from Schaeffler AG because  
25 Schaeffler AG doesn't make any bearings that it would be able

1 to import.

2 I think what Mr. Hoese is trying to do is put  
3 together kind of a personal jurisdiction stew where you take  
4 a little here, take a little there, take some from this  
5 company and some from this company, take a little from this  
6 press release and that press release. That's not the  
7 standard. The standard after a properly supported  
8 Rule 12(b)(2) motion, which we have filed, is laid out  
9 clearly in the Carrier case and the Tennyson case, and it  
10 requires plaintiffs to come forth with specific facts in  
11 affidavits or otherwise and they just haven't done that.  
12 That's all I have.

13 THE COURT: Okay. Thank you very much. All right.  
14 NSK?

15 MS. TOWEILL: Thank you, Your Honor. My name is  
16 Teale Toweill. I'm here on behalf of NSK Americas, Inc.

17 We also have a 12(b)(6) Twombly motion. You have  
18 the papers in front of you. I do agree that Mr. Kessler has  
19 pretty vigorously argued the relative paucity of the  
20 allegations in the three complaints, but there are a few  
21 points I would like to quickly make.

22 THE COURT: Okay.

23 MS. TOWEILL: Mr. Kessler noted that in the  
24 opposition filed by the plaintiffs, pages one through three  
25 list their various allegations that they claim are sufficient

1 to support their pleading burden under Twombly. We actually  
2 have pages three through nine, which I don't know is a good  
3 thing or a bad thing but --

4 THE COURT: It's a good thing I read all the pages.

5 MS. TOWEILL: Sorry?

6 THE COURT: I said it's a good thing I read all the  
7 pages.

8 MS. TOWEILL: Good thing you read all the pages.  
9 Well, you can read all of these pages, that's fine, because  
10 as it turns out pretty much none of these are allegations as  
11 to NSK Americas specifically. The allegations as to  
12 NSK Americas are very limited, they relate to corporate form,  
13 NSK Americas' relation to NSK, Ltd., its parent company in  
14 Japan.

15 Two of the three complaints, the dealership and  
16 end-payor complaints, note that there were two executives who  
17 at one point worked at NSK Americas and at some point left  
18 their employment there and subsequently took positions at  
19 NSK, Ltd. The third complaint, the direct-purchaser  
20 complaint, makes the same shadow management team allegation,  
21 the exact contours of which are somewhat unclear, and  
22 otherwise plaintiffs seek to rely instead on allegations that  
23 don't name NSK Americas at all.

24 So setting aside the allegations as to NSK Americas  
25 specifically, which I think we can all sort of agree don't

1 create antitrust liability alone, so plaintiffs have two  
2 separate arguments as to why NSK Americas should still be  
3 considered a plausible member of this conspiracy as required  
4 by Twombly.

5           The first is their reliance on generic allegations  
6 as to defendants as a group. There are sort of two  
7 problems -- well, one and-a-half problems with this  
8 particular reliance. First, the end payors, and I will  
9 acknowledge this is an argument as to form, not to substance,  
10 but the end payors did, in fact, define defendants not to  
11 include NSK Americas, so at least insofar as we are talking  
12 about the end-payor complaints all of their allegations as to  
13 defendants generically can't as a matter of definition go to  
14 NSK Americas' conduct, but regardless the 6th Circuit has  
15 already rejected the idea that allegations as to defendants  
16 as a group can satisfy alone the plaintiffs' pleading burdens  
17 under Twombly, I think, so Total Benefits Planning Agency,  
18 which was decided by the 6th Circuit in 2008, held, and I  
19 quote, generic pleading alleging misconduct against  
20 defendants without specifics as to the role each played in  
21 the alleged conspiracy was specifically rejected by Twombly.

22           Carrier Corp. is a 2012 6th Circuit case that was  
23 previously discussed held the same thing, that the  
24 pleadings -- or the complaint must specify how each defendant  
25 was involved in the alleged conspiracy. Generic

1 complaints -- or generic allegations as to defendants simply  
2 don't satisfy that standard.

3           So if we set aside everything that just says  
4 defendants what we have left is a series of allegations as to  
5 entities that are not NSK Americas, and to sort of deal with  
6 these what the plaintiffs try to do is claim that  
7 NSK Americas is, in fact, an alter ego of NSK, Ltd. such that  
8 any wrongdoing alleged as to NSK, Ltd. can be imputed to  
9 NSK Americas, and they do this by going through a litany of  
10 statements regarding foreign proceedings as to NSK, Ltd. in  
11 Japan, in Singapore and other Asian jurisdictions.

12           They might, although they didn't at the time,  
13 reference the EC press release that is now under  
14 consideration by the Court, but none of those -- none of  
15 those pleadings have anything to do with NSK Americas in the  
16 first instance, these are all allegations as to conduct that  
17 took place in foreign jurisdictions by an entity that was not  
18 NSK, Ltd.

19           To sort of get through this alter-ego path the  
20 plaintiffs rely actually on this Court's decision in  
21 GS Electech, which was one of the wire harness decisions, and  
22 we don't disagree with that reliance, but what we do disagree  
23 with is the plaintiffs' sort of cavalier disregard of what  
24 that decision actually said. So what Your Honor said in  
25 GS Electech is that the evidence -- and this is a quote, the

1 evidence must show that there is such a complete identity  
2 between the defendant and the corporation as to suggest that  
3 one was simply the alter ego of another. Complete identity.  
4 In GS Electech you did find that the alter-ego test had been  
5 satisfied, and in doing so you relied on Carrier Corp., the  
6 2012 6th Circuit decision, but Carrier Corp. had a panoply of  
7 allegations going far beyond anything that happened here to  
8 support the idea of alter ego.

9           Here we have statements about corporate forum, the  
10 shadow-management structure, two people who once worked at  
11 the U.S. subsidiary and then subsequently worked at the  
12 Japanese parent company, and that is it. That is far from  
13 sufficient to show that there was a complete identity between  
14 NSK Americas and NSK, Ltd. such that the wrongdoing alleged  
15 against NSK, Ltd. in these complaints can be imputed to  
16 NSK Americas. They simply haven't satisfied the test that  
17 this Court said was the relevant test, and that leaves us  
18 with nothing. That leaves us with a statement that  
19 NSK Americas is a Delaware corporation, it is engaged in the  
20 business of selling bearings, it is owned by a Japanese  
21 corporation against whom allegations have been made, and a  
22 couple guys worked there and then worked somewhere else, and  
23 none of those facts even taken as a whole can be sufficient  
24 to support a finding that NSK Americas plausibly participated  
25 in the alleged conspiracy, and for that reason we think

1 NSK Americas should be dismissed.

2 THE COURT: Thank you.

3 MR. FREY: Good afternoon, Your Honor.

4 Brendan Frey, counsel from Mantese, Honigman, Roseman &  
5 Williamson, P.C., counsel for the auto dealers.

6 I will be arguing in opposition to NSK Americas'  
7 motion on behalf of directs and end payors as well.

8 THE COURT: How do you spell your last name?

9 MR. FREY: Frey, F-R-E-Y.

10 THE COURT: Thank you.

11 MR. FREY: Your Honor, there is an often-quoted  
12 statement from Twombly which I am sure the Court is familiar  
13 with. It provides that even if the allegations in the  
14 complaint might strike a savvy judge as unlikely to lead to  
15 the discovery of supporting evidence, and is improbable, the  
16 complaint may proceed as long as the allegations contain  
17 enough facts to be plausible.

18 And NSK Americas tries to turn the standard on its  
19 head. NSK Americas is the wholly-owned subsidiary of  
20 NSK, Ltd. NSK, Ltd. has admitted to or have been found to  
21 have been fixing the price of bearings around the world. As  
22 Mr. Davidow explained, it is very unlikely that NSK, Ltd.  
23 would have fixed the price of bearings for over a decade  
24 without -- while at the same time allowing its wholly-owned  
25 subsidiary to undercut the price fix in the United States by

1 selling bearings at whatever price it wanted to sell them.

2 NSK Americas' culpability is not only plausible, it  
3 is probable, or as Mr. Davidow said, it is implausible that  
4 NSK Americas would not have been involved in the conspiracy  
5 aimed at the United States.

6 Plaintiffs sufficiently allege NSK Americas'  
7 involvement in the conspiracy. Plaintiffs allege that  
8 defendants conspired to fix the price of bearings sold in the  
9 United States. NSK Americas raises a concern about the  
10 end-payor complaint because there was one paragraph that did  
11 not include NSK Americas, but the rest of the complaint when  
12 viewed as a whole it clearly said that all defendants in  
13 their allegations and NSK Americas is clearly listed as a  
14 defendant in the complaint.

15 End payors have requested if necessary to make that  
16 more explicit if the Court deems it necessary, but they do  
17 not believe it is necessary to do so because when the  
18 complaint is read as a whole NSK Americas is clearly included  
19 in the allegations relating to the defendants.

20 NSK sold price-fixed bearings through its  
21 subsidiaries in the United States. NSK Americas  
22 manufactured, marketed and sold price-fixed bearings in the  
23 United States under control and direction of NSK, Ltd., and  
24 NSK, Ltd. is an admitted global price fixer of bearings and  
25 has been fined 380 million Yen in Japan where the Tokyo

1 District Court held that NSK carried out the central role in  
2 the cartel. NSK has been ordered to pay a fine in Canada for  
3 fixing the price of bearings. Just last week Singapore's  
4 competition authority announced a fine against NSK and its  
5 subsidiary in Singapore for collusive conduct relating to  
6 bearings. NSK has agreed to plead guilty to price fixing  
7 bearings in Europe and to pay a fine of over 62 million Euro,  
8 and NSK has agreed to plead guilty to fixing prices of  
9 bearings sold in the United States from 2000 -- from at least  
10 2000 to 2011 and has agreed to pay a fine of \$68.2 million.

11 The plea agreement with the Department of Justice  
12 further provides that it requires the cooperation of NSK's  
13 subsidiaries and provides the United States will not bring  
14 further criminal charges against NSK or its related entities  
15 for any offense related to this bearings price-fixing  
16 conspiracy.

17 As Your Honor held in the GS Electech opinion and  
18 order, which defendants state they admit is right on point,  
19 this plea agreement creates an inference supporting  
20 NSK Ltd.'s control of NSK Americas. NSK Americas'  
21 participation is not only plausible, it is probable.

22 There are additional factors supporting NSK's  
23 control of NSK Americas. NSK Ltd.'s annual report includes  
24 aggregate financials for all of the NSK entities, it is  
25 reported by sector such as the automotive sector, it is not

1 separate by subsidiaries. NSK, Ltd. and NSK Americas have  
2 shared numerous executives. NSK's subsidiaries around the  
3 globe have been investigated and fined in connection with  
4 bearings price-fixing conspiracy. NSK's subsidiary in Europe  
5 was inspected by the European Commission. NSK's subsidiary  
6 in South Korea was inspected by the Cree of Fair Trade  
7 Commission.

8 THE COURT: Slow down.

9 MR. FREY: Sorry. So I think I said Europe,  
10 South Korea, Singapore, I already mentioned the subsidiary  
11 was fined, and plaintiffs' complaint also cites the quarterly  
12 report from prior to the NSK's guilty plea where the report  
13 provided that NSK's subsidiary in the United States received  
14 a subpoena in connection with U.S. Department of Justice  
15 price-fixing investigation, and they raise an issue with this  
16 saying it is not specific enough to be directed to  
17 NSK Americas but the allegation is that its subsidiary in the  
18 United States received the subpoena, not one of its  
19 subsidiaries. NSK Americas is the only NSK entity listed in  
20 the complaint.

21 THE COURT: Okay.

22 MR. FREY: So -- and then further notably  
23 NSK Americas' receipt of the subpoena was followed by  
24 NSK Ltd.'s guilty plea, which included a non-cooperation  
25 agreement in exchange for NSK Americas' cooperation.

1     NSK Americas' participation is not only plausible, it is  
2     probable. And the defendants don't like it when we say this  
3     but I think it is worth repeating, the Court has heard these  
4     arguments before in wire harness, and as ruled in Tokai Rika  
5     and TRAM's motion to dismiss and GS Electech's motion to  
6     dismiss. And the Court's opinion in wire harness -- opinions  
7     are supported by the Carrier case. And plaintiffs'  
8     allegations in this case are consistent with allegations that  
9     were made in the Carrier Corp. case.

10           The 6th Circuit in Carrier referenced the fact that  
11     plaintiffs allege that the price-fixed product has been sold  
12     in the United States through the subsidiaries, and that there  
13     have been an overlap of executives between the subsidiaries  
14     and the parent company. Those allegations are consistent  
15     with allegations in this case.

16           THE COURT: Okay.

17           MR. FREY: Thank you.

18           THE COURT: Reply?

19           MS. TOWEILL: Just a few hopefully brief and not  
20     too quickly spoken points for Your Honor.

21           First, just to be clear, our issue with the  
22     end-payor complaints is not that there is one paragraph that  
23     does not include NSK Americas, it is that paragraph four of  
24     the end-payor complaint which, in fact, defines the proper  
25     noun defendants does not reference NSK Americas as one of the

1 defendants so defined. It's unclear why they would bother to  
2 define the word defendants if it was meant to be inconclusive  
3 rather than exclusive as they claim in their reply.

4 And further, although they've made in their reply a  
5 brief mention of the possibility of amendment should the  
6 Court require it necessary, and have made a passing request  
7 to do the same now, I would note that that is not a proper  
8 request for leave to amend, and if they do file such a  
9 request we will, of course, respond.

10 THE COURT: Okay.

11 MS. TOWEILL: Now, as to all of these proceedings  
12 that were just listed, the European proceeding, the Singapore  
13 proceeding, the South Korean proceeding, the JFTC  
14 proceedings, some of which apparently included findings as to  
15 subsidiaries of NSK, Ltd., the point is that none of those  
16 included any findings as to NSK Americas and none of those  
17 included any findings as to conduct in America, so unless  
18 this Court finds that NSK Americas is an alter ego of  
19 NSK, Ltd. all of that is irrelevant.

20 And for that test, the test of alter ego, what we  
21 are looking for again is complete identity, and we've heard  
22 that the allegations in these complaints are consistent with  
23 the allegations in the Carrier Corp. case, and it is  
24 certainly the case that the allegations made here also showed  
25 up in the Carrier Corp. case, but I think what plaintiffs are

1 sort of disregarding is that many, many, many other  
2 allegations also showed up in the Carrier Corp. complaint  
3 that was not here -- that were not made here.

4 We have briefed these and I won't waste the Court's  
5 time going through them, but one in particular that the  
6 plaintiffs seem particularly interested in is this idea of  
7 personnel having worked at both the parent and the subsidiary  
8 corporation. Here they have alleged, as I said before, two  
9 employees of NSK Americas at some point left NSK Americas and  
10 subsequently took up positions at NSK, Ltd.

11 In Carrier Corp. the allegation was that key  
12 managerial personnel rotated between the various subsidiaries  
13 on a schedule to ensure complete control and consistent  
14 control of those entities. That promotion in one entity was  
15 practically impossible unless you had rotated through one of  
16 the other entities. And in Carrier Corp. the court had the  
17 benefit of a finding by the European Commission that at least  
18 the European Finnish subsidiary of the parent corporation had  
19 no separate corporate identity, it was functionally the same  
20 company. None of those allegations are here.

21 So while the things they have said were also said  
22 in Carrier Corp., I think they are pretty dramatically  
23 overlooking the things that have not been said.

24 And then just one final point, all of these --  
25 these litany of allegations about NSK, Ltd., which may or may

1 not be sort of borne out in the long run, NSK, Ltd. is a  
2 defendant in this case and NSK, Ltd. is not making a 12(b)(6)  
3 motion. NSK, Ltd. is not challenging the sufficiency of  
4 these allegations. It is NSK Americas, a separate U.S.  
5 subsidiary, to which essentially no argument has been made,  
6 and I think it is important to note that the Court keep in  
7 mind that there is still plenty of fodder for those NSK, Ltd.  
8 allegations even if this motion is granted because NSK, Ltd.  
9 is a completely separate company.

10 THE COURT: Okay.

11 MS. TOWEILL: If I could just add one more point?  
12 I'm glad I didn't number them at the beginning because I  
13 would have miscounted.

14 They have made mention of the NSK, Ltd. plea  
15 agreement, and I would just like to note two things as to  
16 that plea agreement. One, as seems to be a theme here, the  
17 plea agreement relates to NSK, Ltd. and not to NSK Americas.  
18 NSK Americas is not named. The plea agreement does require  
19 cooperation of subsidiaries of NSK, Ltd., but NSK Americas  
20 agreeing to cooperating with the DOJ in return for  
21 non-prosecution seems to me equally plausibly explained as an  
22 independent business decision by a company that would rather  
23 not be prosecuted by the DOJ regardless of whether or not its  
24 parent company had the authority to control or direct such  
25 compliance. So relying on that as a way to sort of define

1 alter ego seems inconsistent with the actual terms of the  
2 plea.

3 THE COURT: Thank you.

4 MS. TOWEILL: Thank you.

5 MR. FREY: May I have a brief sur rebuttal?

6 THE COURT: All right.

7 MR. FREY: Thank you, Your Honor.

8 NSK Americas acknowledges that the allegations in  
9 our complaint are equally plausible to what they counter as  
10 some other scenario. We only need to meet the plausibility  
11 test.

12 I also want to point out that the Carrier Corp.  
13 statement that they tried to make hay of because Carrier  
14 Corp. does trace very similar allegations that are in our  
15 complaint, and then it does have a statement more importantly  
16 about some other allegations which are also consistent with  
17 our complaint, but the more important part of that, in  
18 Carrier Corp. there was a finding of a conspiracy in Europe  
19 and the plaintiffs were trying to connect that to the  
20 United States.

21 Here we are already in the United States, NSK, Ltd.  
22 has already pled guilty to fixing the price of bearings in  
23 the United States, and it is implausible that NSK Americas  
24 would not have been involved in that price-fixing conspiracy  
25 aimed at the United States.

1 THE COURT: Thank you, Mr. Frey.

2 MR. FREY: Thank you.

3 MS. ROMANENKO: Your Honor, Victoria Romanenko.

4 On behalf of auto dealers and end payors, we would  
5 like to request Your Honor to reconsider Mr. Kessler's  
6 request for a supplemental briefing. The defendants could  
7 have raised the Foreign Trade Antitrust Improvements Act  
8 argument in their motion to dismiss and they didn't do that  
9 because they felt that they didn't have the legal support to  
10 do so. Now they are trying to get a --

11 THE COURT: Is he here?

12 UNIDENTIFIED ATTORNEY: No, Your Honor.

13 THE COURT: I can't consider this motion, he's  
14 already left.

15 MS. ROMANENKO: He's left?

16 THE COURT: Yes. Too late.

17 MS. ROMANENKO: Okay.

18 THE COURT: It is brief.

19 MR. WILLIAMS: Your Honor, I have one last thing  
20 actually. I promised one of the defense counsel, he had  
21 raised a concern that in the brief on coordination as to the  
22 deferred defendants, and I listed the guilty pleaders and I  
23 just said Mitsubishi, that he wanted me to make clear that it  
24 is Mitsubishi Heavy Industries which was the signatory to  
25 that brief and not Mitsubishi Electronics, which is part of

1 one of the other briefs, and he just asked me to clarify that  
2 on the record.

3 THE COURT: All right. That's noted for the  
4 record. Thank you.

5 Anything else?

6 (No response.)

7 THE COURT: Well, thank you all very much. We will  
8 see you in October if not before -- oh, wait a minute.

9 MR. FEENEY: We have OSS, Your Honor, one motion.

10 THE COURT: We have one motion left?

11 MR. FEENEY: On OSS, not bearings.

12 THE COURT: I thought those were all waived?

13 MR. FEENEY: Not with respect to TRW Automotive  
14 Holdings' motion to dismiss the direct-purchaser complaint.

15 James Feeney on behalf of TRW Automotive.

16 THE COURT: Okay. I'm going to ask you to do a  
17 very brief argument, Counsel, because we thought it was  
18 waived and I --

19 MR. FEENEY: That's fine, Your Honor.

20 THE COURT: Is your opponent here?

21 MR. HANSEL: Yes, Your Honor.

22 THE COURT: I just wanted to make sure.

23 MR. FEENEY: Mr. Kessler is on the other side, Your  
24 Honor, my side.

25 Your Honor, for the record, James Feeney appearing

1 on behalf of TRW Automotives.

2 As the Court heard this morning, TRW Automotive  
3 Holdings and TRW Deutschland have entered into a settlement  
4 agreement with the end payors and the auto dealers. They  
5 have not settled, however, with the direct purchasers, which  
6 gives rise to the pendency of this motion only as it relates  
7 to TRW Automotive Holdings only as it relates to the  
8 direct-purchaser complaint.

9 And I'm sure the Court -- I know the Court has read  
10 the briefs and is familiar with the argument, and you have  
11 heard a good deal of argument this morning about parents and  
12 subsidiaries, but I would like to spend just a couple  
13 minutes, Your Honor, highlighting for the Court why this  
14 complaint directed against TRW Automotive Holdings, which is  
15 a holding company, which has -- does not sell any OSS  
16 products that are part of the alleged cartel, does not  
17 manufacture any products, there are no allegations of  
18 overlapping executives, there are no allegations of meetings  
19 occurring at TRW Automotive Holdings, there are no  
20 allegations of any participation direct and independent by  
21 TRW Automotive Holdings.

22 The plea agreement that was entered involved a  
23 German subsidiary, an indirect subsidiary, TRW Deutschland.  
24 TRW Deutschland operates independently in Germany. The  
25 cartel that was the subject of the plea agreement involved

1 German-based conduct according to the plea agreement directed  
2 to two German manufacturers. No allegations were made, no  
3 mention was made, no statement was made about TRW Automotive  
4 Holdings participating in any way in this conduct, and unless  
5 the Court is prepared to adopt as a standard that simply  
6 because a parent is sued and a subsidiary -- an indirect  
7 subsidiary, for that matter, pleads guilty, that that is  
8 sufficient to create the plausibility of conspiratorial  
9 conduct by the parent, notwithstanding the absence of any  
10 specific factual allegations involving the parent, then that  
11 would articulate a standard that has not been previously  
12 adopted either by this Court or the 6th Circuit, nor is it a  
13 standard that is recognized under Michigan law involving  
14 piercing the corporate veil.

15           There has to be, as the Court -- as other counsel  
16 has pointed out, complete identity, there is no allegation of  
17 that. There is no allegation of any wrongdoing specifically  
18 directed to Automotive Holdings. The statements that are  
19 made are made in a conclusory fashion, Your Honor. They  
20 really amount to a statement that rises to the level of  
21 essential strict liability.

22           THE COURT: Okay. Thank you.

23           MR. FEENEY: Thank you.

24           MR. HANSEL: Good afternoon, again, Your Honor,  
25 Greg Hansel for the direct-purchaser plaintiffs.

1 TRW Automotive's motion to dismiss should be denied  
2 for three reasons. First, the Court has already denied other  
3 motions to dismiss in the wire harness case based on the same  
4 issue that TRW Automotive is raising. Second, TRW -- the OSS  
5 direct-purchaser plaintiffs have pled a plausible claim  
6 against TRW Automotive because TRW Automotive is the American  
7 connection for TRW Deutschland who pled guilty. Third, on  
8 the veil-piercing issue, federal corporate law does allow  
9 piercing the veil where the corporate form is used to commit  
10 antitrust violations.

11 I know the Court wants to be brief so I have  
12 slashed and burned most of my argument. I will try to be as  
13 quick as possible.

14 Operative allegations in the complaint include that  
15 TRW Automotive Holdings is a Delaware corporation with its  
16 headquarters in Livonia, Michigan. TRW Deutschland Holding,  
17 also a holding company, but that doesn't seem to bother TRW  
18 in this case, pled guilty to price fixing in occupant safety  
19 systems and agreed to pay a \$5.1 million fine -- criminal  
20 fine in the United States.

21 The complaint alleges TRW Automotive wholly owned  
22 TRW Deutschland, controlled it, directed it, and directly or  
23 through subsidiaries manufactured, marketed and sold OSS  
24 products purchased in the United States. Plaintiffs allege  
25 TRW Automotive was an active, knowing participant in the

1 conspiracy, that it knew, approved of, authorized, ordered  
2 and condoned the acts of TRW Deutschland, that the DOJ  
3 subpoenaed TRW Automotive directly first in the United States  
4 even before the EC visited TRW Deutschland in Europe, and  
5 that TRW Automotive as a whole has 20 percent of the OSS  
6 market globally.

7           The other defendants in this case, the other  
8 groups, are Tokai Rika, Takata and AutoLiv, and together with  
9 TRW they control 73 percent of the global market for OSS  
10 products.

11           There are four defendant groups in this case, and  
12 of those four TRW Deutschland has pled guilty, Takata has  
13 pled guilty, AutoLiv has pled guilty as did its employee,  
14 Takayoshi Matsunaga, and Tokai Rika, the fourth defendant,  
15 has pled guilty to other products, heater control panels, as  
16 well as to obstruction of justice. Tokai Rika's former  
17 employee, Hitoshi Hirano, was indicted on May 22nd, 2014 for  
18 price fixing in heater control panels and obstruction of  
19 justice, destroying and ordering destruction of documents.

20           The rulings that the Court has made before that  
21 apply here very briefly are the ruling that on Tokai Rika and  
22 TRAM's motion to dismiss in the wire harness case, which is  
23 Docket No. 74-10, there as here the plaintiffs sued two  
24 corporate affiliates, a parent and an alleged wholly-owned  
25 and controlled subsidiary. There as here, one affiliate had

1       pled guilty, the other had not.

2               Quoting briefly from Your Honor's opinion, the  
3       District Court should not dismember the complaint. The  
4       complaints notify TRAM and Tokai Rika what wrongdoing they  
5       are alleged to have committed. Tokai Rika's guilty plea does  
6       not establish immutable boundaries for civil cases because  
7       guilty pleas are negotiated. The Court finds the complaints  
8       sufficiently allege an agency relationship that the  
9       activities of TRAM were under the direction and control of  
10      defendant Tokai Rika. Plaintiffs have alleged that TRAM was  
11      wholly owned and controlled by Tokai Rika and have met their  
12      pleading burden. There is further support of the  
13      relationship inasmuch as Tokai Rika pleaded guilty to conduct  
14      that occurred at TRAM.

15              Here in OSS, plaintiffs' case is even stronger  
16      because TRW Deutschland pled guilty to price fixing in the  
17      same product, OSS products, whereas in Tokai Rika's case it  
18      was a different product, it was heater control panels, but it  
19      was kept in the wire harness cases.

20              The second point, we all remember the great classic  
21      movie The French Connection. What was the American  
22      connection here between TRW Deutschland, which counsel has  
23      argued is an independent subsidiary, if there is such a  
24      thing, an independent subsidiary in Germany, what is their  
25      connection with the U.S. market such that they would plead

1 guilty to price fixing in the United States? The answer is  
2 their American connection is TRW Automotive.

3 What is -- so the Sherman Act only reaches conduct  
4 that affects the United States. TRW Deutschland has no  
5 office in the United States, it only operates here through  
6 TRW Automotive, which has 28 locations in the United States  
7 and its headquarters down the road in Livonia. So  
8 TRW Automotive has consolidated financials, the annual report  
9 cited by the defendants in their brief does not even mention  
10 TRW Deutschland, and the financials are consolidated.

11 What TRW entity did the Department of Justice  
12 investigate in the United States? DOJ subpoenaed  
13 TRW Automotive and did so before the EC investigation in  
14 Europe, so that order is significant.

15 And what role does TRW Automotive play in the  
16 global TRW group? Well, it plays a dominant role. As the  
17 Court stated in the GS Electech motion denying the motion to  
18 dismiss, allegations of dominance may, quote, create an  
19 inference, end of quote, that multiple entities, quote,  
20 participated in the conspiracy.

21 To hear TRW tell it, TRW Automotive doesn't make or  
22 sell anything. Well, this may come as news to the  
23 well-compensated senior executives of TRW Automotive in  
24 Livonia, including the executive vice president of  
25 manufacturing and operations at TRW Automotive, I guess he

1 has nothing to do. The executive vice president of sales at  
2 TRW Automotive, who I guess has a no-show job also, and the  
3 executive vice president and CFO who must not be involved in  
4 finance and pricing. What do these three executives do all  
5 day in Livonia?

6 TRW Automotive is the parent and sole owner of  
7 TRW Deutschland. It owned and controlled and dominated it.  
8 It is not plausible that in the backyard in America of its  
9 dominant parent TRW Deutschland could participate in a  
10 price-fixing conspiracy without its knowledge.

11 Finally, on the veil piercing, Your Honor, we  
12 briefed it, I won't belabor it, but under federal common law  
13 there is a lower standard than under state veil-piercing law  
14 where there is an allegation that a corporation has used a  
15 subsidiary to violate the antitrust laws. We have fully  
16 briefed it. The Court has also addressed that in the  
17 GS Electech and the TRAM and Tokai Rika cases. There is one  
18 more case which I provided to counsel this morning which  
19 cites a case that TRW cites in its brief, the TFT LCD case.

20 THE COURT: The what?

21 MR. HANSEL: If I may, this case I'm referring to  
22 now is called the Marine Hose Antitrust Litigation. If I may  
23 approach I have a copy for the Court?

24 THE COURT: All right. Thank you.

25 MR. HANSEL: Very similar facts to this. It was an

1 antitrust class-action MDL. The court had found already that  
2 one entity, a subsidiary called ITR, that the allegations  
3 against ITR had been sufficient. This is a Southern District  
4 of Florida. But the plaintiffs were also suing the parent  
5 company of ITR called SAIAG, and SAIAG'S parent Cumital  
6 SAIAG. And the court ruled that the allegations were  
7 sufficient to sustain the complaint against all three  
8 entities, the parent and the ultimate parent, and held  
9 plaintiff need not differentiate between related corporate  
10 entities.

11 For those reasons, Your Honor, direct-purchaser  
12 plaintiffs in OSS respectfully ask the Court to deny  
13 TRW Automotive's motion to dismiss. Thank you.

14 THE COURT: Thank you.

15 MR. FEENEY: Very briefly, Your Honor but  
16 importantly?

17 THE COURT: Okay.

18 MR. FEENEY: Point number one, Your Honor, with  
19 regard to the wire harness opinions, in wire harness, in TR,  
20 the parent pled guilty to conduct that took place at its  
21 subsidiary. There is no allegation of that in this case  
22 because they cannot make that allegation. Here the parent  
23 did not plead guilty to anything and the subsidiary -- the  
24 indirect subsidiary pled guilty to conduct occurring in  
25 Germany, not in the United States, in terms of the cartel

1 activity.

2 Point number two, with regard to the GSE case, the  
3 parent was alleged to have sold price-fixed products through  
4 its U.S. subsidiaries. Again, that did not occur and there  
5 is no allegation that that occurred in this case. The  
6 price-fixed products that are the subject of the plea  
7 agreement and the guilty plea entered by TRW Deutschland were  
8 sold to German manufacturers -- German manufacturers in  
9 Germany, they made their way into the United States. That is  
10 the American connection. It has nothing to do with what  
11 three executives in Livonia are doing on daily basis. There  
12 is no allegation in the complaint to the contrary, and for  
13 counsel to suggest that it is different ignores the plea  
14 agreement and ignores the allegation -- the allegations in  
15 their own complaint.

16 I would invite the Court to simply look at  
17 page four -- pages four and five of our reply brief where we  
18 outline every one of these allegations that is made, and the  
19 Court will see upon scrutiny that none of these specifically  
20 involve conduct occurring at or by TRW Automotive.

21 Finally, Your Honor, the last time I checked  
22 Michigan law applies, and the case law is clear on that with  
23 regard to the alter-ego issue. Thank you.

24 THE COURT: Thank you.

25 MS. KINGSLEY: Your Honor, Meredith Kingsley on



## CERTIFICATION

I, Robert L. Smith, Official Court Reporter of the United States District Court, Eastern District of Michigan, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing pages comprise a full, true and correct transcript taken in the matter of IN RE: AUTOMOTIVE PARTS ANTITRUST LITIGATION, Case No. 12-02311, on Wednesday, June 4, 2014.

s/Robert L. Smith

Robert L. Smith, RPR, CSR 5098  
Federal Official Court Reporter  
United States District Court  
Eastern District of Michigan

Date: 06/12/2014

Detroit, Michigan